

# Responses to Migration Issues

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## Introduction

**T**his chapter provides detailed background to the material on responses to migration issues contained in the report *Binational Study: Migration between Mexico and the United States*.

The time frame of this discussion of responses to migration issues begins essentially with the termination of the Bracero Program in 1964 and goes to the present. The pre-bracero period obviously had considerable influence in shaping Mexican and U.S. responses to human movements, but brevity requires some point of departure. Most emphasis in this discussion will be on more recent responses.

The organization of what follows is divided into nine sections. See also Volume 3, pages 1215 to 1250, for additional material, including four brief case studies illustrating the nature of the analytical model. These studies deal with the Bracero Program; the migration ripple effects of the 1982 economic crisis in Mexico; the effort to stimulate an economic-development response alongside the 1986 IRCA legislation; and the Mexican reaction to the incidents in Riverside, California, in 1996.

The nine sections in the body of this discussion are the following:

1. *Analytical model.* This is designed to set the framework from which decisions are made to respond to what are seen as migration-engendered problems.

2. *Differing perspectives.* It is not necessary to elaborate on why the authorities and public in Mexico, the sending country, view migration issues differently from these groups in the United States, which receives the immigrants. Yet is important to keep these differences in mind when seeking the kind of cooperation that this bilateral study implies. There is a predilection for Mexicans to see migration, undocumented or otherwise, as a relatively benign, really unavoidable, development given the situation in that country, and for Americans to be less sanguine about immigration in general and negative about illegal immigration. There really is no completely consensual attitude.

3. *Objectives of the two countries.* This section flows logically from the previous comment on the different perspectives of the sending and receiving countries.

4. *Societal attitudes.* This section will draw heavily on polls and focus groups. It also will examine the forces shaping these attitudes.

5. *Legislative and judicial responses.* The main U.S. responses take legislative and judicial form. They do to some extent in Mexico as well, but also are reflected in official statements and in reactions to U.S. responses.

6. *Other actions.* These relate either to non-legislative and non-judicial responses and to actions to enforce laws and judicial decisions.

7. *Responses and reactions thereto.* When one side acts, the other may respond. The reaction may deplore the initial response, or it can reinforce its intent. The typical sequence in the past was a one-sided response to a perceived problem, reaction to that response by the other side, and then possibly a counter-reaction by the original respondent. The one-sided nature of initial responses is increasingly giving way to dialogue before action is taken. This study, for example, grows out of a Mexican proposal for a binational examination of the migration issue and a positive response by the United States.

8. *The changing relationship.* U.S.-Mexico relations have been altered by the existence of NAFTA and the cooperation this demands on trade, investment, financial, and other economic issues. NAFTA has spawned considerable institutionalization of the economic relationship and the contacts being developed spill over to the migration field. NAFTA does not provide complete insulation against bilateral conflict, as the March 1997 U.S. debate over decertification of Mexico for insufficient cooperation to reduce drug trafficking illustrated. Mexico was eventually certified.

9. *Conclusions.* The basis for these are set in the main body of the discussion. The conclusions can also serve as the starting point for policy discussion.

## The Analytical Model

The normal pattern is that pressure calling for a response to a perceived migration problem builds up in the United States, the receiving country in this bilateral relationship. This means that the United States generally takes the initiative. Mexican authorities and society at large may deplore the conditions that push migrants out of the country, but the corrective in the Mexican system cannot be to act independently to keep people from leaving. The solution to the emigration pressure is seen in Mexico as being long term in nature, to alter the national economy and societal conditions enough so that more Mexicans will stay at home voluntarily. This means that most Mexican responses will be reactive. As in many other facets of the bilateral relationship, there is an asymmetry in responses to migration matters.

The pressure that prompts a response can originate in either country, or in both simultaneously. The most usual progression is for a series of developments to build up over time and be brought to a head by a single event or series of events. The passage of Proposition 187 in California in November 1994 can be seen as a response to what was believed to be rising illegal immigration combined with an economic downturn in the state. This legislation, in turn, triggered an instinctive anti-California (anti-U.S.) reaction in Mexico. The high-speed chase and televised beating of illegal immigrants by Riverside County police triggered a strong outburst in Mexico, but this had been preceded by long-standing Mexican concern over the violation of the rights of its nationals in the United States.

One can cite any number of situations that led to significant responses. The shortage of manpower during World War II stimulated the Bracero Program. The sense that these Mexican workers were adversely affecting wages of a sensitive U.S. group of workers led to the termination of the program. IRCA came to fruition in the United States from a process of long study, including the use of commissions established either by the executive or the Congress; the first of these commissions was established earlier when the U.S. economy was performing poorly.

Recession and economic depression in the United States is often the underlying stimulus for a response of immigrant exclusion. This was true during the Great Depression, just as it was in California in the first half of the 1990s. An economic crisis in Mexico in 1982 added to the U.S. economic pressure leading to the IRCA legislation.

Budgetary concerns, both state and national, have been a key stimulant of recent U.S. responses to perceived immigration pressures. Proposition 187 was preceded by studies depicting (and often exaggerating) the high cost of providing public services to aliens illegally in California. The 1996 immigration legislation was substantially influenced by budgetary considerations. Those provisions of the welfare-reform legislation of 1996 restricting benefits to legal immigrants were prompted largely by federal budgetary considerations.

The model set forth here argues that significant responses in the migration field are not usually generated solely by immigration pressures, but only when these come in combination with other events and developments. If the combination is not present, the immigration pressures by themselves are unlikely to lead to meaningful responses. The U.S. Congress did not act to provide significant additional funding for the Border Patrol until the last few years, when the movement of undocumented workers over the border combined with the declining California economy and the increasing attention to the costs of providing services to these immigrants at a time of constrained budgets.

The most important U.S. responses have a protracted gestation period, years in the case of IRCA, decades really for providing adequate funding for the Immigration and Naturalization Service. Debate on immigration responses is usually emotional because immigration is central to the way Americans define themselves. Debate is generally fierce because there are many competing interests. These include important employers of immigrants, including those who are present illegally, who seek to limit effective control mechanisms or, failing this, to extract some exceptions for their needs. The Special Agricultural Worker provisions of IRCA and the ability to hire foreign mathematics professors and skilled computer technicians are examples of the latter. The “half-open door” so familiar to students of U.S. immigration practice, that immigration legislation either is riddled with loopholes or inadequately enforced, is the result of these differing views.<sup>1</sup>

Because of this internal conflict, immigration legislation contains many compromises. This is self-evident, but taken one step further, it means that some issues are resolved, while others are left pending for future debates. The ink is barely dry on the 1996 immigration bill, and debate has already begun on the desirability of new legislation to reduce the number of legal immigrants permitted to enter the United States. The fact that each bill is the result of compromises is hardly an earth-shaking observation, but what seems to be happening is that immigration debates are coming with greater frequency. It took 13 years for the McCarran-Walter Act to be amended substantially by the Immigration Act of 1965, 11 years for the Eilberg bill to extend country ceilings to the Western Hemisphere in 1976, four years to adopt the 1980 Refugee Act, and another six years until IRCA was passed in 1986. Then, more recently, the United States added the Immigration Act of 1990, then the most recent legislation in 1996, and a new debate is taking place for possible legislation on legal immigration. Since 1980, the United States has enacted significant new immigration legislation every few years, on average.

One final point needs to be added to this analytical model, namely, the extent to which Mexican interests are factored into the shaping of U.S. policy. In the past, this took place less through the openly stated opinions of the Mexican authorities because these opinions were rarely given. The Mexican interest was included

primarily through alliances, tacit or explicit, with U.S. interest groups seeking the same outcomes as the Mexican authorities. For example, the legalization provisions of IRCA favored Mexicans based largely on domestic U.S. concerns working in tandem with Mexican hopes.

In more recent years, roughly the last 10, discussion between Mexican and U.S. authorities on immigration matters has become quite common. Mexican viewpoints, to some extent, are thus factored directly into U.S. policy, such as commitments to protect the rights of Mexican nationals. Mexico, however, has not reached the point where it lobbies directly with the U.S. Congress on immigration legislation.

The steps in the analytical model, to recapitulate, are roughly the following:

- An underlying context conducive to some U.S. immigration response, one usually rooted in the U.S. economic situation;
- A triggering event or series of events, either in the United States or in Mexico;
- A period of U.S. debate and political compromise that resolves some differences but leaves other issues on the table;
- A Mexican reaction to the U.S. action, and perhaps a U.S. counter-reaction;
- A new context for the next series of triggering events;
- And a speeding up of the process of additional immigration reforms.

### **Differing Perspectives**

The perspectives of a country sending migrants necessarily differ from those of the country receiving immigrants. The normal power relationship in this kind of twosome favors the receiving country which, in principle, has the ability to decide what immigrants it will accept and under what conditions. In reality, the U.S.-Mexico migration relationship is more complex than this simple model. The border between the two countries is extensive and porous, notwithstanding the increased resources now at the disposal of the U.S. Border Patrol. This gives individual Mexicans considerable leeway to affect migration decisions and outcomes.

During most of the past two decades, the Mexican authorities remained aloof from this decision-making contest. This is now undergoing a subtle transformation; the Mexican government is prepared to consult with U.S. authorities on migration issues. Nevertheless, the basic situation is largely unchanged in that the contest is between migrants themselves and U.S. authorities. In the past, the U.S. authorities refrained from entering this contest fully and a Swiss-cheese border

full of holes was allowed to prevail. Internally, the employer-penalty program was not vigorously enforced. It remains to be seen how far the change in the official U.S. behavior will go, how long it will last, and what its effects will be.

The different perspectives of the two countries are shaped not only by the inherent facts that dominate the supply push-demand pull reality, but also by a number of other considerations. Many of these have changed in recent years and others are in dynamic flux as this is written. In addition, the perceptions of the public and legislators in the two countries about the migration phenomenon, even when not completely in conformity with the facts, have great weight in national responses.

## **Historical Background**

### ***Four Migration Waves***

Mass migration from Mexico to the United States is about a hundred years old. There have been four major waves of migration during this period: three north-bound to the United States and one south-bound to Mexico. Beginning in the late 1890s and lasting until about 1930, the first major wave consisted mostly of seasonal agricultural laborers, refugees from the Mexican Revolution, and family-settler migrants moving north to the United States. The Mexican-born population in the United States shot up from about 100,000 in 1900 to about a million in 1930—about two-thirds of these legal immigrants.<sup>2</sup>

The second major wave was a large flow of about 600,000 settlers who returned south to Mexico during the Great Depression of the 1930s. The south-bound net flow of migrants to Mexico during this decade was larger than the north-bound net flow had been to the United States during the peak Mexican immigration decade of the 1920s.<sup>3</sup>

The third major wave occurred in the context of the organized bilateral recruitment of agricultural laborers during the Bracero Program (1942-1964) and consisted of hundreds of thousands of Mexican workers who were employed under 4.6 million contracts in the United States, and an additional number—probably several hundred thousand workers—who entered illegally and worked without contracts. Some settler migration also occurred during this period, but a significant proportion of undocumented settlers was expelled during Operation Wetback (1954) and the number of legal immigrants admitted from Mexico was relatively small.

Within this third wave, there were two distinct periods of unauthorized migration. Although there are no reliable estimates of this population, the trend in the apprehension of unauthorized Mexican migrants is suggestive: an explosive growth from 64,000 in FY 1945 to 485,000 in FY 1950 and then to 1,075,000 in FY 1954; an abrupt drop thereafter to 243,000 in FY 1955, 72,000 in FY 1956, and eventually to 30,000 in FY 1960. (Some authors have suggested erroneously that the one million

apprehensions of 1954 correspond to Operation Wetback. Actually, Operation Wetback generated about 175,000 apprehensions and expulsions during a two-month period in the summer of 1954, most of which occurred during FY 1955.)

The fourth major wave began after the last *bracero* agreement expired in 1964 and has consisted of large flows of undocumented and legal immigrants, temporary and long-term residents in the United States. Again, the growth in the number of apprehensions is suggestive of the growing flow of undocumented migrants: Apprehensions rose from 44,000 during the last fiscal year of the Bracero Program to 277,000 in 1970, 680,000 in FY 1975, 817,000 in FY 1980 and a peak of 1.7 million in FY 1986. The 1970 population stock of Mexican-born persons residing in the United States regardless of immigration status was almost one million—almost at the peak number estimated for 1930. It has grown by an annual average of more than 160,000 since then, to about 5 million today.

### ***Seven Junctures When Perspectives and Responses Changed***

During the past 10 decades, there have been about seven periods which can be characterized as junctures when government responses and official perspectives toward Mexican migration underwent significant change. In only one of these instances were the responses of the two countries relatively harmonious (early World War II, see below), and at two other junctures (1954 and 1964, see below) the changes sought by the United States led to openly acknowledged policy differences. In the remaining four cases of change in perspective and responses, one finds situations where the circumstances are mixed and include areas both of common ground and significant conflict.

The first juncture occurred in 1917. Several independent events of that year combined in a new way to redefine the policy issues related to Mexican migration. The 1917 Mexican Constitution adopted provisions for the protection of Mexican emigrant workers and the regulation of labor recruiters offering employment abroad. The United States adopted a new set of stringent requirements for the admission of immigrants and then, after entering World War I, promptly suspended them for Mexican and Canadian temporary workers. The recruitment of workers under these exceptions has sometimes been referred to as the first Bracero Program. About 75,000 Mexican workers were admitted temporarily under the World War I exceptions; many of them were later admitted as legal immigrants.

It was the first time since the Civil War that U.S. immigration policy had shifted to the admission of temporary foreign workers. Large numbers of workers also were recruited illegally; these persons waded across the Rio Grande/Rio Bravo in order to avoid paying the head tax at the port of entry. The Mexican government

was too involved in the civil war to pay much attention to migration, but it did express opposition to this recruitment and complained that labor recruiters were evading Mexican laws and that migrants were not being protected.

The decade of the 1920s represents a second juncture with several major changes in policy and perspective. On the U.S. side, the Border Patrol was established in 1924 and it began to deport thousands of Mexican workers who crossed illegally and were mostly employed in agriculture. By 1929, legislation was adopted making entry without inspection a crime punishable by a fine and imprisonment, not just an administrative offense which could be remedied by deportation.

Also during the period, Mexican legal immigration grew substantially—averaging more than 50,000 immigrants a year during 1924-1929—large enough to generate national controversy and to spark a movement in Congress to eliminate the exemption of Mexicans from the quotas imposed in the 1924 Act. Other governments had criticized the national origins approach to restricting U.S. immigration, and the Mexican government also complained that the extension of this quota would discriminate against its nationals.

Mindful of the bilateral conflicts that had arisen with China and Japan when Congress enacted legislation to stop immigration from those countries, the State Department actively opposed the proposal to restrict Mexican immigration.<sup>4</sup> In order to accomplish the same end in a manner less objectionable to Mexico, the State Department, through its consulates, began to apply stringently the exclusion against many Mexican visa seekers on the grounds that they were “likely to become a public charge.” The number of immigrants admitted declined sharply from 67,000 in FY 1927 to 39,000 in 1929. The administrative restriction of Mexican legal immigrants, and the subsequent decline to less than 3,000 immigrants admitted annually during the depression years, made congressional action unnecessary. Administrative restriction deflected the congressional thrust for an annual quota to be applied to Mexican immigrants. However, it also had the unintended effect of encouraging Mexicans who planned to obtain immigrant visas to enter the United States illegally, seek employment, and later apply for a visa from within the country in order to get around the public-charge exclusion.

On the Mexican side, the government’s policy toward emigration also underwent significant change during the decade. The most significant unilateral effort to repatriate Mexican emigrants occurred in 1921, when the U.S. economy went into sharp recession and tens of thousands of Mexicans were thrown out of work. The Mexican government promoted an ambitious program which resulted in the repatriation of 150,000 Mexicans—about twice as many as the United States had admitted during the World War I first Bracero Program.

However, when the U.S. economy recovered smartly in 1922, many of the workers brought home at Mexican government expense again emigrated to the

United States. Mexican government policy gave less emphasis to repatriation thereafter and a new emphasis was brought to bear on the protection of human and labor rights of emigrants in the United States through the activities of the Mexican consulates. The developments of the 1920s served both to define the experience with consular protection in the United States and to accentuate the Mexican view that, to some extent, emigration was virtually inevitable, and that the most appropriate policy response would be U.S.-Mexican bilateral management of contract labor migration. The Mexican government proposed such an arrangement in 1929,<sup>5</sup> but the major U.S. concern at that time was not how to promote seasonal labor migration, but how to reduce drastically the admission of long-term Mexican immigrants.

A third juncture took place immediately after the onset of the Great Depression. In 1931-32, the Bureau of Immigration conducted a much-publicized drive in Los Angeles and elsewhere to locate foreigners who had entered illegally and to expel them. The rationale for this deportation scare was that by encouraging immigrants to leave, jobs would be opened up for unemployed U.S. citizens. In addition, local governments, such as the County of Los Angeles, encouraged Mexican immigrant families supported by local charities to leave by paying for their transportation to the border and arranging for the Mexican government to cover the rest of the transportation to points in the interior. The Mexican government at first encouraged this repatriation, but it later viewed this as a situation created by U.S. employers who had recruited Mexican workers during the 1920s boom and then refused to assume any responsibility for them during the 1930s depression. The Mexican government also criticized discriminatory actions taken against Mexicans by local governments during the depression era.

A fourth juncture occurred at the outset of World War II, when perceived labor shortages and the need for bilateral wartime cooperation led to a major shift in U.S. policy: the negotiation of wartime bilateral agreements for the temporary employment of Mexican workers in U.S. agriculture and railroads. The protections adopted in the agreements reflected the requirements established in previous Mexican legislation. The two governments assumed responsibility for negotiating the terms of the employer-worker agreements, their enforcement, and the administration of the program, including the selection and transportation of Mexican workers, known as *braceros*. The efforts to jointly determine the conditions of wartime *bracero* migration quickly led to efforts to focus on undocumented migration, with the Mexican government pressuring the United States to enforce its border controls and adopting its own modest efforts to discourage illegal emigration. The Bracero Program was continued after the war ended, and the bilateral agreement was renegotiated several times until the last agreement expired in December 1964.

A fifth juncture occurred in the middle of the Bracero Program. In 1954, the negotiations for a new *bracero* agreement broke down, with the U.S. government claiming that Mexican consulates had exercised their authority inappropriately to withhold workers from growers in order to enforce Mexican interpretations of the agreement. The U.S. government announced a program to recruit Mexican workers unilaterally, a decision which incensed Mexican public opinion and led to a disastrous decision by the Mexican government to use force to attempt to prevent the unauthorized departure of Mexican workers. These efforts by the Mexican government produced riots and confrontations between Mexican officers and workers at the northern Mexican border. In the meantime, the U.S. Comptroller General declared that the U.S. government had no authority to spend appropriated funds for unilateral recruitment, and both governments returned to the negotiating table and reached a new agreement much closer to the objectives of the United States.

Subsequently, the U.S. government organized "Operation Wetback," a deportation campaign which removed many families of unauthorized immigrants living in the United States and transported them with Mexican government cooperation to points in the interior of Mexico. The campaign was accompanied by efforts to facilitate the contracting of *braceros* to substitute for expelled workers. During this juncture, the U.S. government was successful in pushing the Mexican government about as far as it would go to accommodate growers' interests in a new design for a Bracero Program and also promoted the common objective of reducing sharply illegal entries across the border.

A sixth juncture occurred during the period leading to and in the aftermath of the termination of the Bracero Program. In the early 1960s, pressure against the Bracero Program by labor and civil rights organizations mounted and opposition grew within the U.S. administration. In 1963, the Mexican embassy in Washington, D.C. expressed its view in a diplomatic note that terminating the program would not by itself bring Mexican labor migration to an end: unauthorized migration would grow in its place. The adverse effects on domestic farm labor working conditions that opponents of the program attributed to it would, in the view of the embassy, be exacerbated rather than eliminated by halting *bracero* recruitment. The embassy's note was published in the Congressional Record and the ensuing debate led to a congressional vote to postpone the termination of the program to December, 1964.

Although these differences were compensated by close cooperation in other areas of the bilateral relationship, U.S. and Mexican government opinions about the advisability of a Bracero Program remained in conflict for a decade. The Mexican government gave up its unsuccessful attempts to put the negotiation of a new

temporary worker program on the bilateral agenda in 1974 when it appeared that migration and energy issues might be linked.

A seventh juncture occurred in 1986, with the passage of the Immigration Reform and Control Act (IRCA). For more than a decade, a debate had been conducted in the United States over what would be the best approach to reduce illegal immigration. IRCA adopted a variation of the grand compromise which had been advanced consistently since 1977: employer sanctions and mass legalization. Since the largest national group in the unauthorized immigrant population was from Mexico, both of these provisions were seen as having a major impact on Mexicans. The perspectives held by the U.S. public and officials regarding Mexican migration shaped, and in turn were shaped by, the implementation of employer sanctions and mass legalization.

The events leading to the passage of IRCA and then its aftermath point in two different directions. On the one hand, they serve to underscore national differences in perspective—especially when comparing the most prominent views in both countries. U.S. public opinion showed a strong consensus against illegal immigration even though the public was divided on how to respond. The consensus of Mexican public opinion was that migration in one form or another was virtually inevitable and that problems were created by U.S. measures to expel millions of migrants who could not be absorbed by a weak Mexican economy. The public debate in both countries in the decade prior to 1986 pulled them apart rather than brought them together.

On the other hand, IRCA produced a convergence in the efforts to expand the bilateral dialogue on migration. Mexican officials, in the aftermath of IRCA, questioned the wisdom of having refused to adopt a more open position regarding the U.S. immigration legislative initiatives. Also, U.S. officials became concerned that, because of migration and narcotics control issues, bilateral relations were in some disarray. The immediate aftermath of IRCA seems to have marked a turning point for both governments in their efforts to engage each other more substantively on bilateral migration issues.

## **Changing Policy Stances**

The bilateral interaction on migration issues has altered in recent years, most notably from a lack of consultation to considerable discussion between the two governments. At the margin, this has led to some actions that were missing before, such as greater attention to the human rights of Mexicans illegally in the United States, but the inherent differences between the two countries on the migration issue remain.

## *Mexico*

Important and influential Mexican actors view migration as an outgrowth of the social-economic situation that exists in the country. Consequently, the general approach to the issue has found expression at a highly abstract level. Three such expressions can be mentioned. The first is a straightforward supply-demand model, that as long as the demand for the migrants exists in the United States, there is little that the Mexican authorities can do about it. The second frames the issue in development terms and concludes that as long as income disparities remain large, migration will continue. The third is that because of Mexico's position as an exit country from which emigration is inevitable, anything the government does has a low probability of success.

These conceptions have had great influence on Mexican thinking about migration since the end of the Bracero Program in 1964. The perspective has been summarized as follows: because the constitution guarantees Mexicans the right to free transit within the country, it would therefore be wrong for the state to prevent emigration; the Mexican government could not succeed in preventing emigration even if it tried; Mexicans emigrate in response to U.S. demand, over which Mexico has no control; and there is no reason for Mexico to try to control emigration because, through their actions (though not necessarily their rhetoric), the U.S. government and key political actors support undocumented immigration as beneficial to the country.<sup>6</sup>

This way of thinking, in operational terms, translated into a policy to have no policy on undocumented migration to the United States. In shorthand, Mexico had a "no-policy" policy. Mexico, therefore, stayed aloof from the debate on changes in U.S. immigration policy, and this political stance undoubtedly was optimal for meeting Mexican interests over many years.<sup>7</sup>

The no-policy policy began to shift in the latter half of the 1980s when Mexico started to liberalize its economy and to play a more active role in world economic affairs (e.g., entry into the General Agreement on Tariffs and Trade) and closer engagement with the United States, which led in due course to the conclusion of NAFTA. The passage of IRCA in 1986 probably was the turning point in Mexico's position. The Commission for the Study of International Migration and Cooperative Economic Development—the Asencio Commission named after its chairman, Diego Asencio—that was mandated in the IRCA legislation called for bilateral dialogue on positive ways to deter undocumented migration by promoting economic development in Mexico and this led to extensive contacts and much binational research on migration issues. These discussions were relatively neutral, focused mainly on studying issues rather than changing policy—but there were consultations where before there had been none.

The grand bilateral policy of NAFTA which came later, even though it dealt with economic issues, had its migration elements. One of the assumptions behind NAFTA was that it would facilitate Mexican economic growth and thus indirectly deter Mexican emigration. In the years since, the search for bilateral cooperation on migration issues has focused on practical, small steps rather than grand policies.

### *United States*

The U.S. counterpart of the no-policy policy of Mexico was to act unilaterally on migration matters. This suited the U.S. style, but had a practical logic if the Mexican authorities preferred not to be involved. IRCA's provisions setting up the Asencio Commission enabled the United States to engage Mexico on the related development-migration issues. Bilateral engagement has since become the norm, with occasional lapses.

The degree of consultation is considerable and takes place at various levels. The memorandum of understanding (MOU) of May 1996 dealing with the protection of the rights of Mexican nationals in the United States was agreed at the 13th meeting of the U.S.-Mexico Binational Commission, a cabinet-level body.<sup>8</sup> The decisions of the Working Group on Migration and Consular Affairs include, in addition to carrying out this Binational Study of Migration, supporting the participation of Mexican officials in the Citizen Advisory Committees along the U.S.-Mexican border, and taking measures to assure safer and more orderly repatriation of undocumented migrants.

During President Bill Clinton's visit to Mexico, he and President Ernesto Zedillo of Mexico issued a joint statement dated May 6, 1997, laying out measures to "ensure a proper and respectful management" of the complex migration phenomenon.

The Working Group on Migration and Consular Affairs of the Bilateral Commission is the single most important body for consultation on migration matters. The persons in charge of migration policy and their subordinates now meet regularly. These meetings are facilitated by the presence of a migration attaché at the Mexican embassy in Washington, something unthinkable during the no-policy policy period. While there are sometimes glitches, the Mexican authorities are generally notified of U.S. changes that the INS contemplates. Border Liaison Mechanisms now exist to bring together local, state, and federal officials to discuss and, sometimes, resolve border problems, including migration matters. A Citizens' Advisory Panel has been established for dealing with abuses at the border and Mexican officials are sometimes invited to participate in its meetings.

The unknown in the current pattern of increased dialogue is whether this will lead to harmony between the two countries on migration issues. At the

extremes, there is little give in the official position of either country on the question of illegal entry into the United States. The United States cannot overtly consent to this, and Mexico cannot fortify its border to prevent exit. But there is room to maneuver short of these polar positions, as discussed in the following section.

### ***Potential Common Ground***

Notwithstanding these partially differing perspectives, there is some common ground, perhaps not in the “grand perspectives” but in the small and practical tasks and operations, such as making the border a safer place and enacting and enforcing actions against trafficking and smuggling of migrants. The Mexican authorities, for example, could limit the gathering of persons whose evident purpose is to make a run across the border.

Both governments would prefer migration to be orderly. There is also basic agreement on some fundamental principles. Both governments recognize the sovereign right and legitimate interest of each country to safeguard its own borders and to enforce its own migration laws. Within this context, it is acceptable and profitable to move toward the establishment of mechanisms for consultation on migration issues at different levels of government, including law enforcement personnel and diplomatic and consular representatives, and procedures for the exchange of information, experiences, and resources in various aspects of migration management.

To sum up, both countries now confront some similar challenges with regard to migration flows; these would include instilling respect for the human rights of migrants and assuring simultaneous facilitation and control of entry.

### **Changing Political-Economic Relations**

While the grand policy of NAFTA does not include a migration element (save for Chapter 16 on the temporary entry of business persons), the transformation of respective attitudes that the agreement represents affects all elements of the bilateral relationship.

From the Mexican side, NAFTA represented a shift from maintaining a distant relationship to seizing the economic opportunity that a rich neighbor represents. From the U.S. side, NAFTA represents a way to develop closer political and economic ties with its neighbor. About 80 percent of Mexico’s merchandise exports go to the United States. The industrial co-production that exists as a result of substantial U.S. direct investment has been at the heart of Mexico’s recovery from the economic debacle of 1995. From the U.S. side, the burgeoning market in Mexico, despite the economic setback in 1995, represents a long-term opportunity.

Two-way merchandise trade (using U.S. data) in 1996 amounted to \$130 billion, an increase of 20 percent over 1995.

Negotiating NAFTA also required a shift in bilateral political relations. Mexico's earlier reflexive opposition to U.S. international initiatives had to give way to a more cooperative relationship. The United States had to give political relations with Mexico a higher profile. NAFTA led to the creation of scores of new institutions, mostly to deal with the technical aspects of the agreement (such as rules of origin, customs procedures, and industrial and sanitary standards), but others with considerable political content. These are the various dispute-settlement arrangements, trilateral commissions for labor and the environment, and border institutions for stimulating and financing infrastructure.

Economic-political contacts have been facilitated by embedding them in institutional arrangements. So, too, have migration consultations been institutionalized. The migration issue is sensitive. In a recent poll involving 35,100 ballots, the U.S. Foreign Policy Association found that 32 percent of respondents felt that illegal immigration was the most important issue of U.S.-Mexican relations, more than any other single matter.<sup>9</sup> From the Mexican viewpoint, it is now important that conflicts over migration issues not contaminate the growing bilateral economic integration.

## **Administrative Structures**

While Mexico and the United States both have presidential systems and federal structures, their governance differs substantially. The separation of powers is a basic aspect of the U.S. political structure, whereas the Mexican executive has been all powerful. This may change now that opposition parties control the Chamber of Deputies while the Institutional Revolutionary Party (PRI) controls the presidency. From early in U.S. history, the Supreme Court has had the power to declare laws unconstitutional, which has not been the case in Mexico. The use of the *amparo* in Mexico protects individuals on an ad hoc basis against overdrawn laws. It is much easier to amend the Mexican than the U.S. constitution; and the Mexican constitution is far more detailed than its U.S. counterpart. The Mexican Congress for many years was subordinated to the executive branch, compared with the periodic shifts in dominance between the two branches in the United States. The Mexican processes of government are now changing: the electoral system has been made more transparent; the opposition power in the Congress has increased; and judicial power is increasing. But the differences are still considerable. Except for a few agencies (such as External Relations), there is no permanent civil service in Mexico except at junior, non-policy levels. The turnover of personnel every six years, coinciding with each new president, is substantially greater than in the United States

when a new president takes office. Consequently, there is little institutional memory at senior levels in almost all Mexican government departments. The fact that the same party, the PRI, has been in office for the last 67 years mitigates the effects of the personnel turnover, but does not completely eliminate them because senior people shift from agency to agency. Most decisions in Mexico are made at much more senior levels than in the United States, and the lack of continuity at these levels is therefore aggravated.

The power of the federal government in relation to that of states and localities is significantly greater in Mexico than in the United States. This power is epitomized by the lesser ability of states and localities in Mexico to raise revenue than in the United States. This, too, is changing, but the disparity with the United States remains great; the differences may grow as even more power is going to state and local levels in the United States.

Migration matters in both countries are under federal jurisdiction and it is at this level where the consultation is most intense. Most initiatives, as noted earlier, come from the United States. The most important of these take the form of legislation with attendant appropriations for such things as patrolling the border or verifying the immigration status of job seekers.

There is thus something of a disconnect in both countries in that most bilateral discussion takes place at the federal level, while most of the effects are at state and local levels. It may be desirable to bring local authorities into more of the bilateral give-and-take.

Because immigration issues are so conflictual, pitting interest groups against each other and making it difficult to reach political compromises, the United States has long relied on independent commissions to provide guidance to Congress in anticipation of legislation. The Immigration Commission of 1907-1909 was created to advise Congress on how to respond to the situation created by the “new immigration”—nearly a million newcomers each year, mostly from southern and eastern Europe. It commissioned studies and issued dozens of reports on the characteristics of the new immigrant population.

These reports led to the adoption of a literacy test in 1917 as a screening device intended to reduce the number of illiterate and less desirable immigrants coming to the United States from eastern and southern Europe. When the literacy test did not produce the desired result, Congress abandoned it in favor of straightforward national origins quota laws (1921 and 1924) which essentially barred non-white immigrants and provided few visas for immigrants from eastern and southern Europe. Western Hemisphere countries were exempted from the quota and this led to a large increase in Mexican legal immigration starting in 1924.

In 1950, Truman’s Presidential Commission on Migratory Labor was established to study problems of migrant farm labor. The 1951 report was critical of the Bracero

Program, but it stopped short of recommending its abolition. The Commission also emphasized the adverse effects of illegal migration on domestic farm labor. It presented detailed recommendations for penalizing employers of unauthorized workers—something the Mexican government had advocated before. In 1952, Congress did adopt criminal penalties for the transportation and “harboring” of unauthorized immigrants. However, it explicitly exempted their employment from the penalty legislation. The congressional delegation from Texas was instrumental in securing the passage of this loophole favored by farmers from that state, and it thus came to be known as the “Texas Proviso.” The exception which legally permitted the employment of unauthorized workers was not repealed until the passage of IRCA in 1986.

In 1952, Congress passed omnibus immigration legislation but ignored President Truman’s urgings to repeal the quota restrictions which had been in place since the 1920s. Truman appointed another commission whose 1953 report was influential in leading to the eventual repeal of national origins quotas in 1965.

Starting in 1965, the Select Commission on Western Hemisphere Immigration focused on the implementation of the 1965 Act and on “green card commuter” migration, which had grown after the termination of the Bracero Program. Its work influenced the 1976 amendment which extended the annual country ceiling of 20,000 visas to Western Hemisphere countries. All legal immigrants admitted in addition to that number were “nonquota” immigrants, most of them immediate relatives of U.S. citizens.

In 1978-81, the Select Commission on Immigration and Refugee Policy (SCIRP) held hearings and commissioned studies to review immigration policy in light of the growing unauthorized immigration, especially from Mexico, and the changing patterns of refugee flows. Congress did not wait for its recommendations to adopt the Refugee Act of 1980. The recommendations of the 1981 report were influential, however, in defining the range of acceptable proposals to respond to illegal immigration. These proposals shaped the legislative initiatives presented by Senator Alan Simpson and Representatives Romano Mazzoli and Peter Rodino between 1982 and 1985, which eventually resulted in the Immigration Reform and Control Act of 1986. The combination of employer sanctions and other control measures, and legalization for both long-term residents and temporary farm workers, constituted the political compromise which made legislative success possible after a decade and a half of unsuccessful attempts. SCIRP had envisioned the outlines of that successful political compromise.

The current U.S. Commission on Immigration Reform (1993-1997) is the latest iteration of this pattern. This Commission is charged with all aspects of immigration reform.

In Mexico, the debate on the migration phenomenon also has been the object of open and public participation sponsored both by legislative bodies and by the

executive power. On the legislative side, on December 29, 1984, the Senate created a commission to carry out a public national consultation on the situation of migrant workers, including immigrants into Mexico as well as Mexican migrants into the United States. This consultation was carried out in 16 hearings in central, south, and northern Mexico during all of 1985. The commission's report was presented to the Senate in December 1985.<sup>10</sup> One conclusion of this consultation was the proposal for a Charter of Rights of Migrant Workers to be agreed between Mexico and the United States.

In November 1990, the Mexican Senate again convened a hearing specifically on human rights of migrant workers. This hearing, significantly enough, took place at Mexico's northern border, in Tijuana. There were 92 participants. One characteristic of that hearing was the concern expressed by most participants of rising anti-immigrant attitudes in the United States, the growing use of firearms by U.S. border "vigilantes," and the vulnerable situation of infants, women and Indian migrants. There was a call for more stringent penalties against persons trafficking migrants and for closer dialogue between authorities of the two countries.<sup>11</sup>

On the executive side, in the first half of 1995, there were public consultations, with numerous participants, on the migration phenomenon as part of the process to prepare the national development program. The consultations covered immigration and emigration issues and the opinions expressed were diverse.

## **Objectives of the Two Countries**

This is a shifting target because objectives change with the times and the context. Objectives sometimes must be defined as they relate to specific countries; for example, Mexico's objective to limit illegal immigration from Guatemala is quite different from its desire not to rock the boat with respect to the movement of Mexican migrants to the United States. Mexico, like the United States, has its own structure of employer sanctions to deter the hire of illegal immigrants. For the United States, because entry without documentation is predominantly from Mexico, the U.S. Border Patrol is concentrated at that border.

U.S. immigration policy has placed priority on family reunification since 1965 and, in practice, this has benefited Mexico; but this priority is not immutable. What follows focuses on objectives as articulated or practiced today.

### **Mexico**

Migrant-sending countries rarely have explicit emigration policies. Few countries deliberately encourage emigration on a permanent basis, although many do so for temporary periods. Mexico did facilitate temporary emigration under the

Bracero Program and occasionally supports the idea of new programs to regularize the current illegal immigration into the United States.

Migration is so prominent in Mexico's domestic and foreign affairs that a public stance is unavoidable. This need for going public has to be weighed against a long-standing tradition of noninterference in the domestic affairs of other countries. The way out of this dilemma has been to pursue certain objectives related to migration, but not to have a migration policy as such.

Three major objectives are being pursued by Mexico. The most salient and openly stated is to protect the rights of migrants. This has more to do with migrants than with migration. Because of the large numbers involved, the execution of this objective requires the use of many resources, both outside the country and at home. The protection of migrants' rights abroad involves traditional consular and diplomatic efforts and a continuous monitoring of violations of these rights and the circumstances under which they occur. This is accompanied by public denunciations from time to time. Much of Mexico's consular activity in the United States deals with migration issues.

There are important domestic and foreign implications of this emphasis on the protection of migrant rights. On the domestic front, a special force has been created—Grupo Beta—to prevent abuses against would-be migrants who concentrate near the border to gain access to U.S. territory. Another recent initiative is a change in the General Population Law and its regulatory apparatus to increase penalties against those who traffic in migrant movements.

Achieving foreign migration objectives has led to substantial engagement with U.S. authorities. In addition, Mexico has sponsored international efforts to adopt rules regarding the rights of migrants and their families, irrespective of their legal situation. Mexico was active in the efforts, first in the International Labor Organization and then in the U.N. General Assembly, to pass the 1990 U.N. International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. Mexico took a leading role to develop a shared position on the migration phenomenon within the North and Central American regions, as was acknowledged in the Joint Communique of the Regional Conference on Migration held on March 13 and 14, 1996, in Puebla, Mexico. This conference was attended by the governments of 10 countries. Protection of the human rights of migrants and others was the paramount issue at this conference.

A second Mexican objective is less openly stated, but of considerable importance. This is to avoid abrupt changes in U.S. immigration policy and in the flow of migrants. Mexico wishes to maintain stability of migratory conditions as it considers changes in its migratory regime. One author has conceptualized this objective as wanting "to keep the U.S. door open."<sup>12</sup> Recently this objective has taken the form of wanting to regularize this flow. The current readiness to discuss some form

of a guest-worker agreement can be seen in this light—to achieve steadiness in migratory policy and stability in the flow. The most prevalent proposals since 1994, set forth by diverse social groups, are to conclude a *bracero*-type agreement.<sup>13</sup>

The third objective that emerges from recent declarations of senior Mexican officials is to get recognition of the contribution that Mexican migrants have made to the U.S. economy and society.<sup>14</sup> This objective can be seen as a reaction to the recent negative U.S. climate against immigrants, and Mexican immigrants in particular. (This objective might be expanded to include the contribution that the migrants have made to the Mexican economy and society.)

The Mexican government has developed two main activities in relation to its citizens who are emigrating or have emigrated to U.S. territory: consular protection and a program for supporting communities of resident Mexicans or Mexican-Americans. Consular protection can be considered an immediate response to the wide variety of problems arising from the large flow of Mexican migrants, undocumented and documented, to the United States. The Program for the Mexican Communities Living Abroad can be seen as a medium- and long-term strategy to improve the living conditions of Mexicans and Mexican-Americans north of the Rio Grande.

### ***Consular Protection***

The main objectives of consular protection are to provide general assistance to the individual traveling or working abroad to make his or her stay and management of affairs easier in the receiving country, and to assure that the migrant has access to a system of justice outside of the limits of jurisdiction of his native country. Consular protection implies a claim filed against the local or central authorities located within the consular jurisdiction.

Traditionally, consular protection of co-nationals living in the United States has been considered a priority activity of Mexican foreign policy. There are currently 41 consulates throughout the territory of the United States; 12 are consulates general. This represents the largest network of consulates of any country in the world. Since its inception, consular protection has assisted migrants in their repatriation, hospitalization, recovery of labor compensation, legal trials, and in officially protesting abuses against them.

Analysis of Mexican consular protection in the United States leads to five main comments about this practice:

1. Protection is a traditional activity undertaken by the Mexican government. Consular protection in the United States is more than a century old, dating back to the Treaty of Guadalupe-Hidalgo of 1848. While the United States has focused in Mexico on the protection of property, investments, and goods owned by its nationals, Mexico, by contrast, has focused mostly on the protection of its labor force.

2. Protection is often used as part of political rhetoric. Speeches on foreign policy, and especially those regarding relations with the United States, usually include a reference to these protective activities. This is clearly the case in the yearly presidential State of the Union Address (*Informe Presidencial*). A review of speeches since 1964 shows that most presidents have appealed to the strengthening of consular protection as the principal response to the perceived abuses and violations of the human rights of Mexican legal and undocumented immigrants in the United States.

3. Protection follows the same pattern of reactions and counter-reactions occurring in the rest of the migration issue. The observed sequence is that Mexico responds to a perceived problem, say the Riverside incident discussed elsewhere; then comes a reaction to that response by the United States, which Mexico then possibly follows with a counter-reaction.

4. Since the end of the Bracero Program, the Mexican government has periodically announced the strengthening of this system of protection. During the Zedillo administration, there have been efforts to modernize the system by means of three main activities: training and updating programs; harmonizing criteria of what constitutes a case of protection; and improving technical infrastructure, such as the development of databases.

5. During the 1990s, there has been a tendency to intensify the dialogue between the authorities of both nations, and to establish techniques of coordination or consultation, such as the Border Liaison Mechanism, the Working Group on Migration and Consular Affairs, the Consulting Mechanism for the Immigration and Naturalization Services Activities and Consular Protection, and Mexico's participation in the Citizens' Advisory Panel (CAP).

### ***Program for the Mexican Communities Living Abroad (PMCLA)***

The Program was created in response to frequent demands from Mexican Americans to the Mexican government for more support for their communities living in the United States. The establishment of the PMCLA represents the Mexican government's recognition of the potential of Mexican Americans as a source of political support within the United States, and also the potential of the community to develop closer economic ties with Mexico. President Salinas created the Program in 1990, the year in which the negotiation of NAFTA was launched.

The goals of the PMCLA can be summarized as follows:

- To strengthen the links with the Mexican community in the United States, to defend the civil rights of its members, and to enhance Mexican culture in the United States;

- To contribute to the strengthening of Mexican citizens' capacity to respond to the anti-immigrant climate in various regions of the United States; to institutionalize the relationship with Mexicans living abroad and to increase their visibility in Mexico; and
- To promote business ties between Mexicans and Mexican Americans, and to foster the latter's participation in certain areas of U.S.-Mexico relations.

The administration of Carlos Salinas made the program a priority in the bilateral relationship. The yearly budget of the program has exceeded \$1 million since its creation. This, in terms of allocation of expenditures, makes it more significant than the Consular Protection Program. The PMCLA has developed seven main activities: community organization, sports, education and culture, information and communication, health care, business, and fund raising. The main accomplishments are:

- It has strengthened and broadened Mexican ties with organizations of Mexican Americans;
- It has created a network of cultural institutes all over the United States; and
- It has established a Council for Business Promotion.

## **United States**

The main official U.S. objective is to keep open the front door for legal immigration but to close the back door of illegal immigration. While this objective can be stated simply, it is complex in reality. The desire to limit illegal immigration has long been official policy rhetorically, but not completely in practice. The implicit policies have not always dovetailed with the explicit pronouncements. The immigration legislation of 1996 contained some compromises on how open the front door should be, but the issue was not really resolved. It is quite possible that the issue of numbers will be revisited by the Congress in the near future. The priority given to family reunification is established policy, but there is substantial sentiment for more skill-based selection.

Two articles in a recent issue of the *Atlantic Monthly* give a good synopsis of the debate on U.S. immigration objectives. David Kennedy argues that the United States can still afford to accept immigrants, largely because they augment the labor supply and thus lead to higher economic growth. His main caveat is that immigrant concentration in a few locations challenges the existing culture, a phenomenon not present during earlier waves of immigration in the 19th century. The policy

implications of this analysis are ambiguous, but seem to point in the direction of admitting fewer immigrants in that this may be the only way to limit concentration.<sup>15</sup>

George J. Borjas, following an analysis he has set forth frequently in recent years, argues that because new immigrants are less educated than in the past, their admission leads to a decline in the wages of less-skilled native and national U.S. workers. His article focuses on the distributional effects of new immigrants whose admission, he states, favors employers at the expense of national workers, with only a modest net gain for the economy as a whole. The key policy implication of this argument is to change the criteria for admission in favor of skills and away from family unification.<sup>16</sup>

An analysis by the U.S. Department of Labor on how well the immigrant population legalized under IRCA fared five years later tends to support the Borjas argument. Two findings of that study are that the legalized immigrants compete for low-wage jobs, and that a disproportionate number of them are below the poverty level.<sup>17</sup> These are relatively short-term findings, over five years, and may or may not hold over longer periods, say, a generation or more.

Another objective of the U.S. authorities is to seek greater cooperation from the Mexican government than in the past. The earlier Mexican no-policy policy meant that Mexico was a bystander as its nationals moved illegally across the border. The new policy of dialogue permits the United States to seek more official engagement from Mexico. The Mexican legislation of October 1996 providing for more severe punishment of Mexicans who engage in migrant trafficking is one response to this new bilateral engagement.

The central U.S. objective—to put out the welcome mat to immigrants who enter legally and reject those who enter without documents or illegally overstay visas—requires a combination of facilitation and control. The control elements involve fences at the border, more resources for the Border Patrol, stronger penalties against employers who knowingly hire illegal aliens, a better system to help employers determine who is illegal, and inspections that take place at work sites. Control activities require the cooperation of agencies other than the INS, such as the Labor Department for enforcement of work standards in activities that tend to hire illegal aliens, such as the garment and construction industries, and service establishments such as restaurants and hotels. Cooperation is also sought from local jurisdictions, such as sheriffs.

The facilitation aspect was evident in the INS role in the IRCA legalizations and the effort to speed up border crossings. While it became controversial in the 1996 presidential election campaign, the INS facilitated the naturalization of eligible legal immigrants seeking citizenship and is working methodically to reduce the backlog of eligible legal admissions. The 1996 immigration law contains a number of facilitation measures: more full-time INS and Customs officials at the

border to reduce delays at peak crossing hours; greater use of commuter lanes to facilitate legal entry; more pre-inspection at foreign airports; and pre-clearance authority for foreign officials.

## **The Bilateral Agenda**

There is a bilateral agenda. These common interests include the following:

1. Making the border safer. This is manifested on the Mexican side by Grupo Beta, on the U.S. side by the various facilitation efforts noted above, and jointly by the Border Liaison Mechanism and Mexican participation in the Citizens' Advisory Panel.

2. Cooperative efforts to prevent smuggling of migrants.

3. Cross-border community programs to facilitate legal crossings.

The cooperation to achieve these and related objectives are the consequence of the increased dialogue of recent years. The nature of the agreed objectives was set forth in the joint statement of the two presidents of May 6, 1997.

At the same time, the porousness of the border in conjunction with U.S. efforts to reduce illegal crossings at the most convenient points (such as Tijuana-San Diego and Ciudad Juárez-El Paso) has resulted in some tragic consequences. Crossings have been deflected to less hospitable terrains and a recorded 126 deaths resulted in 1996, and the 1997 death toll is accumulating at a more rapid pace.

## **Societal Attitudes and How They are Shaped**

The vast divide that exists in societal attitudes in the two countries on the migration phenomenon is amply demonstrated in public opinion surveys, focus group conclusions, treatment in the media, and positions of key actors. There is no way to fully bridge the divide because it is rooted in the underlying situations of a sending and a receiving country and, consequently, reflects national self-interest in the current context. The best that can be expected is deeper understanding on each side of the attitude of the other and why this outlook exists.

## **Public Opinion Polls and Focus Groups**

These will be shown separately for the United States and Mexico.

### ***United States***

While there are variations in the percentages depending on the circumstances when polls are conducted, the dominant U.S. attitude has been for restriction of

immigration. The restrictionist viewpoint has grown in recent years, dominated largely by attitudes in California. The restrictionist sentiment there exemplified by the passage of Proposition 187 in November 1994 had reverberations throughout the nation, but other states did not necessarily have the same reaction. The Governor of Texas, another important immigrant-receiving state, in August 1995 publicly deplored the Mexico- and immigrant-bashing attitude that he felt was prevalent in California. A similar reaction came at roughly the same time from Rudolph Giuliani, the mayor of New York City.

The ups and downs in the intensity of anti-immigrant sentiment seem to depend significantly on the employment (unemployment) situation at the time a poll is taken. It is therefore unwise to generalize about the depth of feeling on the immigration issue other than as a reflection of attitudes at a given moment. The vote on Proposition 187 came before California had recovered from an economic downturn. The contrary declaration of Governor George Bush, Jr., came when Texas had recovered from its earlier recession. It is important to note, also, that Texas relies much more than California on exports to Mexico and Texas is the main truck route for U.S. trade with Mexico.<sup>18</sup>

Two aspects of the U.S. polling data merit emphasis:

1. The shifts in the proportion of the U.S. public that believes the level of immigration should be decreased track reasonably well with the state of the economy (i.e., there is a rise in restrictionist sentiment as the economy worsens). Using Gallup Poll data, the proportion of persons favoring a decrease in immigration was 33 percent in June 1965, 42 percent in March 1977, 65 percent in 1981, 49 percent in June 1986, 53 percent in 1988, and 65 percent in 1993, and roughly the same two thirds in the summer of 1995.<sup>19</sup> The economy was relatively healthy in 1965 (relatively low restrictionist sentiment), depressed in 1982 (rising restrictionist sentiment), and growing in 1986 (and restrictionist sentiment declined). The concordance between the state of the economy and restrictionist sentiment was less pronounced in 1988, 1993, and 1995.

2. There is no evident correlation between public opinion as reflected in the polls and legislation. The polls over the years show much support for penalizing employers for knowingly hiring illegal aliens, but it took many years, until 1986, to reflect this in federal legislation; and even then, the law was not rigorously enforced. According to a Gallup poll in 1984, a majority of the public supported the idea of an identification card, but this has been resisted by the U.S. Congress. Despite the public sentiment over the past few decades for fewer immigrants, this has not been reflected in legislation. The estimate of the number of legal immigrants who will be admitted in 1997 under the 1996 law is 850,000, about the same as the previous year, despite the recent increase shown in the polling data of the proportion of the public favoring a reduction.

There are a number of reasons for the disparity between public opinion as reflected in polls and congressional action. These include the lobbying of interest groups, the logrolling that takes place to simultaneously satisfy many interests, differences that exist between regions of the country, concern over civil liberties with respect to identity cards, and the fact that polling percentages may not reflect deeply held sentiments.

The best reflection of public opinion in California, at least in November 1994, was the vote on Proposition 187, which was supported by a margin of 59 to 41 percent. Polls in California tend to show substantial divergences between Anglo and Latino voters. Thus, in 1994, the California Opinion Index indicated that 56 percent of Anglos felt that the IRCA amnesty was a bad thing, while 68 percent of Latinos thought it was a good thing to do. Again in 1994, 55 percent of Anglos favored amending the Constitution to deny automatic citizenship to children of illegal aliens born in the United States, while 76 percent of Latinos were against such a constitutional amendment.

On some issues, however, positions were not what intuition would lead one to believe. For example, on the use of ID cards for all persons living in the United States, 55 percent of Anglos thought it was a bad idea, while 56 percent of Latinos favored this. On the issue of the number of immigrants who should be admitted for legal residence, 55 percent of Californians thought this should be reduced, which was about 10 percentage points less than the Gallup Poll showed for the nation as a whole.

Recent developments in California, such as Proposition 187 and the incidents in Riverside County affecting illegal immigrants, have stimulated the effort for empowerment among Latinos. A poll commissioned by *La Opinion*, the nation's leading Spanish-language daily newspaper, and KVEA television, both in Los Angeles, reported in May 1996 that 57 percent of Latinos felt the best response was through political empowerment.<sup>20</sup>

## **Mexico**

Data on Mexican public opinion regarding migration are either unsystematic or nonexistent. Recent opinion polls, therefore, have to be treated with caution. With this in mind, the high concentration of some poll results leads to the easy interpretation that positions merely repeat "messages of the media." However, this is not always the case. For example, a poll of Mexico City residents taken immediately after the April 1996 Riverside incident found that three out of four respondents consider that restricting the entrance of *indocumentados* is not in the interest of the United States. Eighty-five percent of the same Mexico City respondents also believe that Mexicans do little or nothing to help their nationals abroad. Only 15 percent declare to know that there are institutions which defend them.<sup>21</sup>

The different perceptions that exist in the two countries on the migration phenomenon manifest themselves quite vividly when it is possible to compare the answers to identical questions in a Mexican and U.S. survey. Such a dual survey was carried out in August 1996. The Mexican survey showed that only 2 percent of the respondents believed that stricter border controls would be effective to diminish migration, compared with 19 percent who believed so in the U.S. survey. The perceptions on the effectiveness of employer sanctions work in the same direction: the Mexican survey showed that only 4 percent believed that employer sanctions would work, while 18 percent believed so in the U.S. survey.<sup>22</sup>

According to a January 1997 opinion poll by MORI de México, only one in seven Mexicans believed that the measures taken by the government to protect its nationals abroad are somewhat effective, and 42 percent believed governmental efforts lack effectiveness. This same poll showed that 85 percent of Mexicans consider that U.S. immigration policy is either unfair or racist.

When questioned about the costs and benefits of Mexicans working in the United States, the respondents thought that migration was positive for both countries: 40 percent thought that the Mexican economy benefits, whereas 58 percent believed the U.S. economy benefits.

In response to a question on the convenience of seeking a formal bilateral temporary worker agreement, 76 percent thought that the Mexican government should seek such a pact with the United States.<sup>23</sup>

A similar picture of Mexican perceptions emerges from another survey carried out at the end of 1996. The survey was commissioned by Mexico's National Population Council (CONAPO) to evaluate family planning program in nine states in Central and Southern Mexico. Respondents consider that although Mexico receives some benefits from its migrants (42.6%), the United States benefits much more (75.3%). Regarding perceptions of Mexican protection of migrants, the opinions are almost equally divided between those who consider these efforts acceptable (41.3%) and those who consider that deficient (46.2%). Finally, the proportion of those who would like to see some sort of "temporary worker program" is overwhelming (81.2%).<sup>24</sup>

## **Elites and Non-elites**

There is little solid data on the views of elites and non-elites generally in the United States. There is evidence that the views of Latino elites differ from those of the rank and file. This statement may be more accurate if nuanced in the way Peter Skerry has done: "Indeed, by defining the agenda for a poorly organized and largely disenfranchised group, the leaders exert extraordinary influence over how it [the rank and file, presumably] views the world."<sup>25</sup> Some examples given by Skerry are

positions on immigration and abortion. De la Garza and De Sipio also stress the importance of citizenship, or its lack, in shaping Latino views.<sup>26</sup>

Espenshade and Hempstead find in their analysis of survey data that the higher the education and income of Latino respondents, the more favorable they generally are to greater immigration.<sup>27</sup> This is consistent with what the authors hypothesized. The attitudinal differences between elites (defined in this example as the more educated and wealthier) and non-elites reflect the disparities in their perceived self-interest as much or more than in their ethnicity.

The significance of citizenship and disenfranchisement in determining mass as opposed to leadership positions may be undergoing a transformation. The increase in Latino (and other) naturalizations stimulated by the removal of benefits from legal aliens in the immigration and welfare bills had considerable influence in elections across the United States in 1996, especially in places where many Latinos live.<sup>28</sup> The rank and file Latinos, many more now enfranchised, turned out in greater numbers than in the past and, for the most part, their votes reflected the positions of the leadership. One unintended consequence of Proposition 187 and other anti-immigrant measures elsewhere has been to weaken the Republican Party in this and other states, at least for now, by antagonizing the fastest growing major ethnic minority—Latinos—in the United States.<sup>29</sup>

In Mexico, similarly, there is little solid data on the differences, if any, between the views of elites and non-elites. An approximation, however, of the views of the former can be obtained by looking at the way many enlightened employers interpret the migration phenomenon. Employers generally take the view that labor mobility is beneficial and rational. For them, there is no direct, or easy, solution to stopping Mexican migration. The answer to migration is indirect—through a healthier and more dynamic economy. Economic elites believe that if one wants to stop the current exodus, it is important that Mexican families recoup their economic security.

Employers see the migration phenomenon from the framework of the regional asymmetries within North America, and its solution within this same regional framework. Employers put forward two possible avenues to deal with the “migration problem.” One is to legalize the phenomenon. The other (not in opposition to the first) is to promote the idea that within the North American space, resources—including labor—have to be shared among the three member countries.<sup>30</sup>

## **Public Positions of Influential Actors**

Influential players can have a substantial impact on the public perception about migration issues. The positions of these actors undoubtedly carry much weight because their prominence attracts considerable media attention to their views. The

resulting public perceptions, whether or not accurate, do have an effect on legislative outcomes and on U.S.-Mexican relations.

In the United States, Governor Pete Wilson of California, by his advocacy of Proposition 187, gave official sanction to the measure. Governor Wilson had earlier made the issue of illegal immigration into California an important feature of his re-election campaign. Pat Buchanan, when he was seeking the Republican nomination for president in 1996, surely influenced many voters to support his anti-immigrant, especially anti-Mexican-immigrant, stance. In the end, Bob Dole, the eventual Republican candidate, supported Proposition 187. The anti-Mexican-immigrant position was by no means limited to Republicans. Senator Diane Feinstein of California opposed NAFTA largely on anti-immigrant grounds, and she has continued to take this position to this day. Her fellow Democrat from California, Senator Barbara Boxer, took a similar position.

Other key actors took opposite positions. As noted elsewhere, Governor George Bush of Texas criticized the anti-Mexican tone of many of the key players in California. President Clinton, on the opposite side of the position taken by his Republican rival, carried California in the presidential election.

Immigration from Mexico, and assertions about its fiscal burden for individual states and its social consequences for the nation as a whole, raised the visibility of Mexican relations in the United States, and not always in the most felicitous manner.

In Mexico, public statements and declarations of principles of key actors are plentiful. The positions selected—only three—are considered particularly relevant in framing the domestic debate and shaping the main public and private responses to the migration phenomenon. In his *Informe Presidencial*, President José López Portillo (1976-1982) synthesized in one short sentence what would later be repeated often as the Mexican view on the migration reality: “Mexico wants to export goods, not people.” For years, the bulwark of the Mexican migration policy position has been the emphasis on the protection of migrant rights. During the debate on Proposition 187, this emphasis led Andrés Rozental, Undersecretary of Foreign Relations, to go on record in California in August 1994, in a way that many consider aggressive, even impolite and undiplomatic, in defense of Mexican migrants abroad. Finally, Jorge Bustamante, a well known scholar of the migration phenomenon, for years has been advocating the consideration of “a border perspective” in dealing with migration. His argument is that realities and perceptions at the border are peculiar to that region.

## Media

The media treatment of migration is well exemplified by the nature of the coverage Proposition 187 received in Mexico and by the sober coverage in the United States of immigration reform.

## ***Mexico — Proposition 187***

The media in Mexico appeared to provide an accurate representation of the positions of the executive branch of government, the political parties, firms, the Catholic church, and the intelligentsia and academics about Proposition 187:

1. Executive branch of government: Both the Salinas and Zedillo governments saw the initiative as a racist and xenophobic expression. The government concluded that Proposition 187 affects the relationship between Mexico and the United States and compels dealing with the migration issue from a holistic and not a partial perspective.

2. Legislative branch of government and political parties: Both rejected the initiative and rallied to defend the human rights of the migrants. Both groups feared that Governor Pete Wilson's "electoral demagoguery" would spread to other places in the United States. Their reaction had three elements: rejection of Proposition 187; the need to defend the human rights of Mexican nationals; and improvement of conditions in Mexico to obviate the need to emigrate.

3. Academic and intellectual communities: These groups characterized the Mexican government's response as unenthusiastic and felt that the rights of Mexican migrants had been subordinated to NAFTA negotiations and then to Carlos Salinas de Gortari's ambition to lead the World Trade Organization. They argued that failure to include the free mobility of labor between the signatory countries of NAFTA led to the discriminatory treatment of illegal workers.

4. Catholic church: Demanded a prompt dialogue between authorities of both countries and proposed the creation of a "Free Labor Agreement." Church leaders insisted that the Mexican government had to create conditions to avoid forcing citizens to cross the border illegally.

5. Private sector: Considered immoral the use of the migration problem by the U.S. politicians as a political device in the search for votes. Yet, they accepted that there is a serious unemployment problem in Mexico. They favored a strong defense of the rights of illegal workers in the United States.<sup>31</sup>

## ***United States — Immigration Reform***

In the period analyzed—from October to December 1995 and April 1996—the American press published a series of articles on the migration problem, focusing on the illegality aspect of the issue. In most reports, the dilemma was treated as a fiscal, economic and social problem which had adverse effects on American workers. There was also much stress on U.S. sovereignty loss because of lack of control of the border. Most articles supported unilateral U.S. measures to control illegal immigration.

The U.S. media reporting also showed two other tendencies: that measures like Proposition 187 were not a complete solution to migration problems; and the need to respect the human rights of workers.<sup>32</sup>

## **Advocacy by Nongovernmental Organizations**

The manner in which this is done differs in extent and intensity in the United States and Mexico.

### *United States*

Public interest groups are common in the United States and, in a sense, all significant legislation is the outcome of contests between such groups with differing interests. It has ever been thus in the United States, even if not to the extent that exists today; and, as Toqueville observed in a different setting, this capacity for organization of the public at large is one of the strengths of U.S. democracy. The immigration field lends itself to legislative and information contests because the interests at stake touch simultaneously on family and kinship matters, the cultural development of society, and the exercise of sovereignty over entry into national territory. There are many U.S. NGOs whose work is devoted exclusively to immigration issues (e.g., Federation for Immigration Reform, Center for Immigration Studies, and Voice of Citizens Together in California), and many more for whom immigration is one facet of their activities (such as the League of United Latin American Citizens, Mexican American Legal Defense Fund, National Council of La Raza, and, where issues of civil rights are involved, the American Civil Liberties Union). Business and agricultural interests take public positions on elements of legislation. The relative influence of these groups is significant in framing the compromises that emerge in immigration legislation.

As one goes through the 1996 immigration and appropriation bills, the influence of NGOs—either direct or as a result of public-education efforts—on outcomes becomes abundantly clear. Provisions to provide more funds to the Border Patrol than the administration requested demonstrates the strength of the anti-illegal immigrant sentiment. So do the pilot programs for confirmation of employment eligibility; but the fact that they are voluntary pilot programs also demonstrates that opinions differ sharply on this issue. The facilitation of legal entry at the border is in large part the result of a public-information campaign by NGOs. The restriction of benefits to non-citizen legal immigrants in both the immigration and welfare bills is partly the result of budgetary stringency and of pressure by NGOs. The provision making mutilation of female genital organs a criminal offense is the consequence of a public information effort by NGOs.

The list could be extended to past legislation, such as the SAWs program of IRCA and, before that, the Texas Proviso of 1952. The half-open door practice reflected compromises between various NGO groups which led to formal opposition to illegal immigration but not excessively so in practice. The constitutional case brought against implementation of major segments of Proposition 187 was directed by the ACLU in California.

The removal of the Gallegly amendment, which would have denied public education to alien children illegally in the United States, was largely a consequence of an organized public campaign by a number of NGOs. This outcome was aided considerably by the opposition to the amendment by the two Republican senators from Texas, Phil Gramm and Kay Bailey Hutchison.<sup>33</sup>

### *Mexico*

NGOs have helped Mexican migrants for years. With the influx of Central American refugees into Mexico in the late 1970s and early 1980s, new NGOs arose whose work was directed to these groups of immigrants. This division of labor on migrants into and out of Mexico continues to the present, although there are NGOs that deal with both groups. NGOs increasingly combine work on issues of emigration from Mexico and those dealing with immigration into Mexico.

Mexican NGOs are becoming increasingly active and visible in the public debate. A group of at least two dozen NGOs, in combination with NGOs of other countries, gathered in Puebla, Mexico just before the First Regional Migratory Conference (March 1996) and presented a combined resolution. NGOs seek recognition by the government as interlocutors of the civic society.

These NGOs act as a pressure group for the migrants. The following two issues seem to take priority in their agendas: to inform and sensitize the population at large on the realities of the migration phenomenon; and to attempt to limit the adverse effects of migration on individuals, families, and communities. Many NGOs publicly denounce abuses and violations suffered by migrants during their journey toward the North, be they Mexicans or other nationals.<sup>34</sup>

Although not an NGO, nor devoted particularly to migration issues, the Comisión Nacional de Derechos Humanos (CNDH) has been monitoring the compliance and violations of migrants' human rights and, in so doing, has contributed tremendously to the creation of a culture of respect for human rights, including those of the migrants whatever their legal status. The CNDH in 1996 published its Second Report on the violations of migrants human rights along the northern border.<sup>35</sup> In 1995, it had published a report on the violations of the migrants' rights along the southern border.<sup>36</sup>

## Legislative and Judicial Responses

### U.S. Federal Immigration Legislation

#### *Nationality*

The U.S. Constitution states that all persons born in the territory of the United States are U.S. citizens and that Congress is empowered to establish a “uniform rule of naturalization.” The terms by which nationality and citizenship are defined, acquired, and lost are established by federal legislation and court decisions interpreting this broad Constitutional provision.

Birth in the United States confers citizenship regardless of the status of the parents. Birth abroad of U.S. citizen parents confers derivative citizenship, according to complex rules that have changed over time. Usually, naturalization is a process by which a legally admitted immigrant who has resided in the United States for at least five years submits a petition and passes an examination in English and civics.

#### *Admission of Immigrants*

The United States sees itself as a country of immigration, and sees immigrants as potential U.S. (naturalized) citizens. U.S. immigration legislation has often arisen as a response to a perceived immigration problem of the moment, but usually has not focused specifically on Mexican immigrants. Early examples of policies that in some way focused on Mexican immigrants include the suspension of certain requirements of the 1917 Immigration Act to allow the temporary admission of Mexican workers during World War I, the creation of the Border Patrol in 1924, and the administrative restriction in 1927 which resulted in a decline in legal immigration from Mexico in the absence of quotas fixed by statute. Another example of a policy focused on Mexico was the recruitment of railroad and agricultural workers during World War II and the institutionalization of the Bracero Program in 1951.

Family reunification emerged as an important feature of U.S. immigration policy when numerical restrictions were first introduced in 1921, and it was maintained when immigration law was reorganized into the Immigration and Nationality Act of 1952. In 1965 it became a central principle of U.S. immigration policy. Before and since then, immediate relatives—unmarried children, spouses, and parents—of U.S. citizens have been admitted without statutory limit. Immediate relatives of permanent resident aliens and other close relatives of U.S. citizens and resident aliens have been admitted according to a complex set of rules which changed between 1965 and 1990 within a worldwide annual numerical ceiling. Preference categories set aside about 80 percent of the numerically limited visas for family-sponsored immigrants; employment-sponsored immigrants comprised most of the remainder.

In fiscal year 1995, the United States admitted over 720,000 immigrants, 12.5 percent, or nearly 90,000 of them born in Mexico (Table 1). The vast majority of these were close relatives of U.S. citizens or legal permanent residents—460,000 or 64 percent of the total, 90 percent of the immigrants from Mexico. Mexican immigrants comprised 26 percent of the total immigrants admitted under family-sponsored preferences (first through fourth preferences), including the 2A preference category of which 75 percent are admitted exempt from the per-country limit. By contrast, they comprised only 2 percent of the employment-based immigrants admitted and 3 percent of the categories not subject to numerical cap, which includes refugees and asylees.

Because the vast majority of Mexican immigrants over the years have been family sponsored and more have applied under numerically limited categories than visas have become available, backlogs have developed as applicants have waited for an immigrant visa. This first became apparent in Mexico's case shortly after 1976, when all countries were assigned an annual numerical limit of 20,000 immigrant visas for applicants other than immediate relatives of U.S. citizens. By 1982 271,582 active applications from Mexico were pending; by 1989 this had grown to 403,523. The 1986 Immigration reform and Control Act increased pressure on the visa backlog system even as it allowed for the legalization of 2.3 million persons from Mexico. This has led to a further increase in applications for permanent immigration status outside the numerical limitations of those legalized under IRCA. Perhaps 800,000 visa applicants in the backlog for Mexico resulted from this second stage of immigrant visa applications.

The 1990 Immigration Act increased the per-country annual limit for Mexico and other countries to approximately 28,000.<sup>37</sup> It also allowed for 55,000 extra visas for each year during 1992-94 minus the amount by which immediate relative immigrants exceeded 239,000 in the previous year for spouses and children of aliens legalized under IRCA. This helped reduce the backlogs and, for a brief period, nearly equalized the visa waiting period for applicants from all countries. By January 1995, however, the immigrant waiting list had grown to a total of 3.7 million applications, one million, i.e., 28 percent, from Mexico (Table 2).

Mexican applications are oversubscribed in all of the family preference categories—the shortest wait (first preference) is now about 4½ years. In March 1997, visas were available for Mexican 2A applicants (spouses, children and unmarried sons and daughters of permanent resident aliens) who had a priority date before June 8, 1992. Third-preference applicants (married sons and daughters of U.S. citizens) and fourth-preference (siblings of adult citizens) have waited for about a decade for a visa. In March 1997, these applicants had February 1, 1988 and October 1, 1985 priority dates, respectively. It is not possible to predict how long it will take any given set of applicants to obtain a visa since they may later

**Table 1**  
**Immigrants Admitted to the United States from All Countries**  
**and Born in Mexico, by Legal Category, FY 1995**

Immigrants Admitted	All Countries	Mexico	%
<b>1. All immigrants admitted (1)=(2)+(22)</b>	<b>720,461</b>	<b>89,932</b>	<b>12.5</b>
<b>2. Subject to numerical cap</b>	<b>593,234</b>	<b>86,079</b>	<b>14.5</b>
<b>3. Family-sponsored preferences</b>	<b>238,122</b>	<b>61,877</b>	<b>26.0</b>
4. Unmarried adult children of U.S. citizens	15,182	1,979	13.0
5. Spouses and unmarried children of alien residents, including exempt from limit	144,535	52,167	36.1
6. Married adult children of U.S. citizens	20,876	2,031	9.7
7. Siblings of U.S. citizens	57,529	5,700	9.9
<b>8. Immediate relatives of U.S. citizens</b>	<b>220,360</b>	<b>22,016</b>	<b>10.0</b>
9. Spouses	123,238	13,824	11.2
10. Parents	48,382	3,844	7.9
11. Children	48,740	4,348	8.9
<b>12. Other family-sponsored subject to cap</b>	<b>2,171</b>	<b>454</b>	<b>20.9</b>
13. Children born abroad to alien residents	1,894	369	19.5
14. Legalization dependents	277	85	30.7
<b>15. Employments-Based immigrants</b>	<b>85,336</b>	<b>1,708</b>	<b>2.0</b>
16. Priority workers	17,339	193	1.1
17. Professionals with advanced degrees of exceptional ability	10,475	56	0.5
18. Skilled, professionals, unskilled	50,245	1,086	2.2
19. Special immigrants	6,737	372	5.5
20. Investors	540	1	0.2
<b>21. Diversity Programs</b>	<b>47,245</b>	<b>24</b>	<b>0.1</b>
<b>22. Not subject to numerical cap</b>	<b>127,227</b>	<b>3,853</b>	<b>3.0</b>
23. Refugees and asylees	114,664	37	0.0
24. Parolees	3,086	0	0.0
25. Suspension of deportation	3,168	581	18.3
26. IRCA legalization	4,267	2,972	69.7
27. Other*	2,042	263	12.9

Source: 1995 Statistical Yearbook of the Immigration and Naturalization Service (Washington, D.C.: GPO, 1997), tables 4, 5, 6, 7, and 8, and unpublished data from Statistics Division, INS. "From Mexico" refers to country of birth.

\*This category consolidates a number of small admission categories listed in table 4. The equivalent tabulations for Mexico are not published. The number listed (263) is inferred from the 3,853 Mexicans admitted not subject to numerical cap.

**Table 2**  
**Immigrant Applicants Waiting for a Visa**  
**January 1995\***

Preference	Chargeable to Mexico	All Countries
All preferences	1,039,706	3,692,506
All family preferences	1,032,695	3,554,986
1st Unmarried adult children of U.S. citizens	4,021	69,540
2A Spouses & unmarried minor children of permanent residents	770,281	1,138,544
2B Unmarried adult children of permanent residents	106,797	494,064
3rd Married children of U.S. citizens	29,770	260,414
4th Siblings of adult U.S. citizens	121,826	1,592,424
All employment preferences	7,011	137,520
1st Priority workers	129	9,361
2nd Members of professions	35	9,097
3rd Skilled workers, professionals and others	6,351	111,506
4th Certain special immigrants	494	7,393
5th Investors, other than targeted emp. areas	0	84
5th Investors, targeted emp. areas	2	79

Source: United States Department of State, Bureau of Consular Affairs, Report of the Visa Office, 1995.

\*Active immigrant visa applicants registered at consular offices in January, 1995.

submit applications under a more advantageous category, a close relative may naturalize and petition for their admission outside of the annual numerical ceiling, or Congress may amend the law again.

### ***Control of Unauthorized Immigration***

IRCA contained important legislative changes in policy regarding the deterrence of unauthorized immigration. Its principal provisions were (1) the adoption of penalties for employers who knowingly hired unauthorized immigrants and who did not review the documentation of all new hires; (2) the legalization of millions of unauthorized migrants; and (3) additional resources for the apprehension and removal of illegal entrants at the border with Mexico. The legalization provisions

allowed migrants who had resided illegally in the United States since January 1982 and met other requirements, or who had been employed in perishable agriculture for at least 90 days during the twelve months ending in May 1986 (Special Agricultural Workers, SAWs) and met other requirements to obtain temporary and later permanent resident status.

IRCA was the end product of a 15 year debate over how to respond to illegal immigration, especially from Mexico, which had been marked by legislative proposals considered but not enacted by Congress in 1971 and 1972, the Carter immigration plan of 1977, the recommendations of the Select Commission on Immigration and Refugee Policy (SCIRP) in 1981, the Reagan immigration plan of 1981, and successive bills introduced by Senator Alan Simpson and Representatives Romano Mazzoli and Peter Rodino.

There is considerable debate regarding the consequences of employer sanctions enforcement and the reasons for their perceived failure. As a policy response to unauthorized immigration, especially from Mexico, four general observations can be made. First, the response itself is a recognition that access to the labor market accounts for much of the unauthorized immigration to the United States. Second, 10 years of experience with the implementation of employer sanctions underscores the difficulties involved in imposing a new employment standard and in shifting to employers part of the burden of regulating immigrants in the labor market. Third, employer sanction legislation has had some unintended but foreseeable effects, such as the growth of an industry in fraudulent documents and the expansion of the role of subcontractors and labor market middlemen who shield employers from the penalties of the law. Finally, though it may be possible to argue that unauthorized migration would have been higher in the absence of employer sanctions, it is clear that these penalties in combination with other circumstances since 1987 have not reduced the population of migrants illegally in the United States or even reduced the rate of growth of this population.

There is much less debate over the immediate consequences of legalization under IRCA. A total of 1.6 million pre-1982 residents and 1.1 million Special Agricultural Workers from all countries legalized their status and eventually were admitted as permanent resident aliens outside of the numerical limitations. Mexican nationals comprised 70 percent of the pre-1982 population and 81 percent of the SAWs legalized under IRCA. Legalization made it possible for many of these persons to stay and work in the United States without fear of deportation, travel freely in and out of the country, to apply for immigrant visas for close relatives, and to apply for naturalization, which many did, starting in the mid 1990s.

The increase in resources dedicated to border enforcement under IRCA was further expanded and a new enforcement approach was adopted in 1993 with Operation Hold-the-Line in El Paso and later with Operation Gatekeeper in San

Diego. The new strategy combines a large growth in the number of Border Patrol officers, an expansion in the kinds of devices and technology employed to detect bordercrossers, and a forward and visible deployment of officers near the boundary. In combination with an extensive metal fence constructed at the border, this approach emphasizes deterring illegal entry whereas previous strategies emphasized apprehension and removal after illegal entry.

Though it is early to evaluate the effect of this heightened border enforcement effort on the size of the unauthorized immigrant population in the United States, it has had the effect of changing the strategies employed by border crossing persons: there is an increase in the number of illegal crossing attempts using fraudulent documents at the ports of entry, of smugglers, and a growth in the flow through difficult desert and mountainous terrain.

### ***1996 Immigration Legislation***

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) goes beyond IRCA and constitutes an even more radical overhaul of immigration law as regards the control of unauthorized immigration. IIRIRA authorizes increased levels of appropriations for new resources and personnel related to immigration enforcement. Depending on annual appropriations in each case, it increases the number of Border Patrol agents by 1,000 per year and support personnel by 300 per year between FY 1997 and FY 2001 (sec. 101). It authorizes an increase in the number of INS investigators and support personnel assigned to investigate employer sanctions violations and document fraud (sec. 131). It authorizes an increase of 300 new full-time investigators assigned to visa overstay cases (sec 132). It mandates the Attorney General to increase detention space to 9,000 beds by the end of FY 1997 (sec. 386). It authorizes \$150 million for costs associated with the removal of aliens, including investigations and detention (sec. 385). It increases the number of asylum officers by 600 in FY 97 (sec. 605). It increases the number of Assistant U.S. Attorneys by at least 25 to assist in the prosecution of crimes relating to immigration and alien smuggling (sec. 204).

IIRIRA makes significant modifications designed to strengthen the effectiveness of existing employer sanctions provisions. It removes the liability for technical violations of paperwork requirements where employers demonstrate good faith (sec. 411). It reduces the number of acceptable employment verification documents and requires the federal government to comply with the same paperwork requirements (412). It requires the Social Security Administration to develop a prototype of a counterfeit-resistant Social Security card (sec. 657). It provides for three types of pilot programs designed to test the strengths and weaknesses and costs of various approaches to verifying work authorization (sec. 401-403). Participation is voluntary

for private employers (although certain employers who have violated immigration laws may be required to participate) and mandatory for job applicants.

In addition to increasing substantially the number of Border Patrol personnel, the IIRIRA mandates the construction of triple fencing along the San Diego border (sec. 102) and calls for reports and studies to evaluate the deterrent effects of INS border management (sec. 107). It also provides funds and establishes new procedures to tighten the inspection of nonimmigrants (sec. 123, 124, 125, 110). At the border it also provides for an improved border crossing card and an increase in the number of border inspectors in order to reduce border crossing delays at peak hours (121).

IIRIRA abolishes the doctrine of “entry,” and replaces it with the concept of “admission,” eliminates the previous exclusion and deportation proceedings and replaces them with a single hearing to effect removal (sec. 301, 304). The expedited removal of inadmissible arriving aliens is authorized. Section 302 introduces an important new condition for aliens which took effect on April 1, 1997: the exclusion without a hearing for individuals with fraudulent documents or no documents at all, unless the alien declares an intention to apply for asylum or state a “credible fear of persecution.” If the alien cannot establish continuous physical presence for the two years before notice or detention, the INS has the discretion to deny a hearing to any alien who was not admitted or paroled—e.g., one who entered without inspection. The Attorney General has sole discretion and this is unreviewable.

The authority of the INS to detain persons, moreover, is no longer subject to judicial review. Nor may a court set aside a decision to detain or release an alien, or to grant or deny bond or parole (sec. 303). Congress anticipated that there may not be sufficient detention space for the INS to hold everyone under this section and therefore authorized a transition period to delay its implementation if there is insufficient space and personnel. Otherwise, this section became effective on April 1, 1997.

Section 301 introduces a set of new conditions which took effect on April 1, 1997, and which bar permanently or for several years the subsequent legal admission of persons who remain unlawfully in the United States. An alien unlawfully present in the United States for more than 180 days and less than one year, and who leaves the United States voluntarily before removal proceedings, is inadmissible for three years. An alien unlawfully present for one year or more and leaves voluntarily before removal proceedings is inadmissible for 10 years. Certain aliens ordered removed at the end of removal proceedings initiated at the time of arrival will be inadmissible for five years. Otherwise, an alien who is ordered removed or who has departed after a removal order was issued, is inadmissible for 10 years—20 years if subsequently removed, permanently if the alien committed an aggravated felony. Aliens unlawfully present for an aggregate period of more than one year or

who have been ordered removed and who subsequently enter or attempt to enter the United States without lawful admission are barred permanently from admission. The Attorney General is given discretion to give prior consent for reapplication only after 10 years have lapsed.

Two previous forms of relief from deportation have been modified significantly. The period of continuous presence required for “suspension of deportation” is extended from seven years to 10, and the applicant must demonstrate that removal would result in “exceptional and extremely unusual hardship” to the alien’s U.S. citizen or permanent resident alien spouse, parent or child (sec. 304). Previously the applicant, a deportable alien, could demonstrate extreme hardship to himself or herself.

The second form of relief from deportation—voluntary departure—is still available to many unlawful migrants. If sought before completion of removal proceedings, it must be undertaken within 120 days of notice to appear. If sought at the conclusion of removal proceedings, several specific conditions must be met: the alien must have been physically present in the United States for at least one year before the notice to appear, can demonstrate good moral character for five years before application, is not deportable because of an aggravated felony or other serious grounds, and has established convincingly that he intends to depart. Failure to depart in a timely fashion will result in civil fines between \$1,000 and \$5,000 (sec. 304). Other penalties include fines not to exceed \$500 per day for aliens who willfully fail or refuse to depart after final orders of removal (sec. 380). The Attorney General is given authority to limit eligibility for voluntary departure for any class of aliens, and this authority is not subject to review by the courts (sec. 304).

The INS is required to detain any alien who is inadmissible on criminal-related grounds or criminal grounds of deportation. The discretion is not subject to judicial review (303).

IIRIRA seeks to facilitate the cooperation and communication between the INS and state and local government agencies and the transfer of alien prisoners to foreign countries. Section 133 authorizes the Attorney General to enter into agreements with state and local authorities in order to authorize state and local law enforcement officers to perform immigration enforcement functions, including investigation, apprehension and detention. The IIRIRA prohibits federal, state, and local officials from prohibiting any government entity from sending or receiving information from the INS regarding the citizenship or immigration status of any individual, or of maintaining such information (sec. 642). It also requires federal regulations to tighten the design of birth certificates issued by the states, and to consult with state agencies for this purpose (sec. 656). Section 330 recommends the negotiation of additional prisoner transfer treaties which would allow for transfers without the prisoner’s consent.

Finally, IIRIRA levies new costs and criminal penalties on unlawful immigrants. It precludes the payment of Social Security benefits to aliens not lawfully present (sec. 503). It requires states to not provide in-state tuition and other college benefits to an alien not lawfully present unless the state would also provide the same benefit to citizens residing in another state (sec. 505). It increases either civil or criminal penalties, or both, for individuals who are unlawfully in the country, who smuggle or transport them, or who provide or utilize false documents. Section 105 provides for civil penalties for illegal entry; sec. 108 for criminal penalties for high-speed flights from immigration checkpoints. Certain criminal violations of the Immigration and Nationality Act may be prosecuted as racketeering offenses (sec. 202). The criminal penalties for alien smuggling are increased to 10 years' imprisonment; 15 years for a third or subsequent offense (sec. 203). Section 211 allows for increased criminal penalties for document fraud and sec. 215 for false claims to citizenship.

The family-sponsored immigration preferences were amended to require that sponsors providing affidavits of support be able to support both the sponsor's and the immigrant families at 125 percent of the federal poverty guideline. This obligation does not end until the sponsored immigrant becomes a U.S. citizen or is employed for 40 quarters (i.e., accumulates ten years of employment). This is a stringent new provision.

Many provisions of IIRIRA and its companion welfare reform legislation are based on the assumption that unauthorized foreigners have abused the adjudicative process and that immigrants take advantage of the welfare system. These two laws, and the anti-terrorist act adopted in 1996, are mutually reinforcing. The hundreds of pages of regulations required to carry out the IIRIRA that were issued by the Justice Department in early 1997 reflect the extraordinarily detailed statute which broadens the authority of the INS over aliens and reduces considerably the legal means available to aliens to challenge administrative decisions which, if applied to citizens, would be quashed by the courts. IIRIRA eliminated many of the procedural due-process safeguards, including in many instances the right to a hearing and the judicial review of administrative decisions. These provisions sharpen differences between citizens and authorized aliens, and declare that unauthorized immigrants cannot call on outside the protection of many of the safeguards available to citizens under the Constitution.

## **U.S. Supreme Court Decisions and Immigration Law Enforcement**

The authority of the law enforcement agents at an external border of the United States or its equivalent (such as at an international port of entry) to conduct searches and seizures and to detain is considerably broader than the authority of police officers

in their normal conduct of criminal law enforcement within the country. The courts have ruled that warrantless searches without probable cause at an external border do not violate the Fourth Amendment prohibition of unreasonable searches and seizures. The authority of immigration officers to stop vehicles, question persons, and conduct searches and seizures at places other than the external border or its equivalent, is broader than that of the police enforcing criminal law, but less broad than at the external border.

Over the past three decades, the Supreme Court has defined different standards of constitutionally permissible searches and seizures depending on whether the law enforcement activity was conducted by a roving patrol near the border, at a traffic checkpoint, and in workplaces, whether the basis for the warrantless search was individualized or not. In the early and mid 1970s, the Court tended to restrict the search and seizure authority of the INS. Since then the trend has been toward the expansion of that authority. This particular area of judicial review raises important questions about the balance between the goals of immigration law enforcement and protecting the privacy of individuals who face the possibility of warrantless searches, questioning, and detention by immigration officers.

Three Supreme Court cases—*Almeida Sánchez v. U.S.* (1973), *U.S. v. Ortiz* (1975) and *U.S. v. Brignoni Ponce* (1975)—defined the initial standard by which the courts sought to balance the strong governmental interest in controlling unauthorized immigration and the constitutional right of individuals against unreasonable searches and seizures. In its opinion in *Brignoni*, the Court acknowledged the friction between the Fourth Amendment and the broad statutory authority granted to the INS by section 287 of the Immigration and Nationality Act to effect searches without a warrant.<sup>38</sup> (Table 3 summarizes the cases discussed in this section. A more extensive summary of Fourth Amendment cases appears in Volume 3, pages 1241 to 1247.)

At issue in *Brignoni* was whether a roving patrol may stop a vehicle near the border and question its occupants relying solely on the apparent Mexican ancestry of those occupants. The Court held that a roving patrol need not base a stop on probable cause if the officers are “aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion” that the vehicle was carrying unauthorized migrants, and that apparent Mexican ancestry did constitute one of several factors that could be employed to determine whether reasonable suspicion existed. However, the Court concluded that the apparent Mexican ancestry of the occupants, alone and unsupported by other facts, was not sufficient to believe the occupants were aliens and to justify a stop. An officer may stop a car briefly and investigate the circumstances that provoke suspicion when his or her observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country.

**Table 3**  
**Summary of selected Fourth Amendment Supreme Court cases,**  
**1973-1990 (U.S. Supreme Court unless otherwise indicated)**

Case	Holding/significance
Almeida-Sánchez v. U.S. (1973)	Limited the power of INS roving patrols to stop and search vehicles not at border.
U.S. v. Ortiz (1975)	Court applied probable cause standard to traffic checkpoint searches.
U.S. v. Brignoni-Ponce (1975)	Apparent Mexican ancestry of occupants of vehicle near the Mexican border not sufficient under Fourth Amendment to stop and question re: citizenship and immigration status.
U.S. v. Martínez-Fuerte (1976)	At a fixed checkpoint, individualized suspicion is not necessary to stop a vehicle. Profile of individuals, such as apparent Mexican ancestry, is sufficient. Exception made for fixed checkpoints.
U.S. v. Cortez (1981)	Objective facts and circumstantial evidence based on profile of individual are a legitimate basis for suspicion of a particular person and justifies investigative stop of vehicle. Dilutes Brignoni-Ponce.
ILGWU v. Sureck (1982)	Ninth Circuit held that the workforce in a building during a factory sweep by INS was seized for the duration of the survey. Fourth Amendment requires individual could be questioned only on basis of reasonable suspicion that the individual was an unauthorized alien.
INS v. Delgado (1984)	Overtaken ILGWU v. Sureck. INS practice of closing factory exits not a detention but interrogation device; systematic questioning not based on individualized suspicion meets Fourth Amendment standard.
INS v. López-Mendoza (1984)	Exclusionary rule does not apply to deportation hearings.
U.S. v. Verdugo-Urquidez (1990)	Fourth Amendment extends only to individuals with substantial connections with U.S. and may not extend to all unauthorized aliens present in the United States.

In *Almeida-Sánchez and Ortiz*, the Court held that a search of an auto away from the border or at a traffic checkpoint requires a warrant or probable cause to meet the reasonable searches and seizures standards of the Fourth Amendment.

In two subsequent decisions—*U.S. v. Martínez-Fuerte* (1976) and *U.S. v. Cortez* (1981)—the Supreme Court backed away somewhat from the standards previously enunciated. In *Cortez*, it diluted the holding in *Brignoni* by allowing for a stop based solely on the profile of an individual. The Supreme Court found, examining “the whole picture,” that the detaining officers had met the *Brignoni-Ponce* requirement of founded suspicion. In *Martínez*, the Court carved out an important exception for stopping vehicles at reasonably located traffic checkpoints. It held that at such checkpoints, INS agents needed no individualized suspicion to stop a vehicle and question its occupants.

The lower court decision in *Martínez* had followed *Almeida*, *Ortiz*, and *Brignoni*. In reversing *Martínez*, the Supreme Court distinguished this case from previous holdings by finding that traffic checkpoints conducted by the Border Patrol present a minimal intrusion on the privacy of motorists and that the purpose of the stops was legitimate and in the public interest. The Court also weighed in on the side of practical considerations of law enforcement to justify the finding that traffic checkpoints do not have to meet traditional Fourth Amendment standards. The opinion observed that the need for this enforcement technique was demonstrated by the records in the cases before the Court, and that on major routes the traffic is too heavy to allow for a particularized study of vehicles.

The exception enunciated in *Martínez* applies only to traffic checkpoint stops. Any intrusion beyond the original stop must be based on consent or probable cause. Even so, in his dissent, Justice Brennan argued that in the instance of checkpoint stops, the majority opinion had rendered the *Brignoni* requirement of minimum reasonable suspicion meaningless. The exception created by *Martínez-Fuerte*, Brennan argued, would “inescapably discriminate against citizens of Mexican ancestry and Mexican aliens lawfully in this country for no other reason than that they unavoidably possess the same ‘suspicious’ physical and grooming characteristics of illegal Mexican aliens.”

*Martínez-Fuerte* marked the beginning of a series of exceptions and a shift away from the requirement of individualized suspicion and traditional interpretations of the Fourth Amendment in the enforcement of immigration law at places away from an external border.

In 1982 the Ninth Circuit Court of Appeals issued a ruling in the case of *International Ladies’ Garment Workers’ Union v. Sureck* which was consistent with the earlier requirements. This case concerned a factory worksite survey in which INS agents moved through the factory floor and inquired as to the citizenship and immigration status of the workers while other agents were stationed at the

exits. The Court admitted that section 287 of the INA authorized the INS to question any alien or person believed to be an alien as to her right to be or remain in the United States, pursuant to the Fourth Amendment. Accordingly, the appeals court found that an individual could be questioned only on the basis of a reasonable suspicion or probable cause that that particular employee was an unauthorized alien. In *ILGWU v. Sureck* the court found that the work force at the plant was seized for the duration of the survey and that the agents had created a detentive environment by their verbal authority, badges, use of the element of surprise, the sustained disruption of the working environment, and the questioning of selected individuals based upon their clothing, facial appearance, hair color and styling, demeanor, language and accent.

In *INS v. Delgado* (1984), the Supreme Court overturned the Ninth Circuit ruling. The majority opinion stated that the factory survey did not result in a seizure of the entire work force, and that the individual questioning of the employees did not amount to a detention or seizure under the Fourth Amendment. A concurring opinion by Justice Powell reasoned that the surveys were permissible by applying the analogy of a permanent checkpoint away from the border. He found that workers have no more expectation of privacy in a workplace than people in automobiles, and therefore the constitutional standard was met since both circumstances posed minimal intrusiveness and maximum government interest. While federal courts continue to refuse racial or national-origin appearance to justify warrantless stops, the Supreme Court is apparently satisfied with the constitutionality of the systematic questioning (as opposed to questioning based on individualized suspicion) that occurs during INS factory surveys.<sup>39</sup>

Another area where INS authority has been interpreted broadly involves the exclusion of evidence obtained unlawfully. The issue in *INS v. López-Mendoza* (1984) was whether an admission of unlawful presence in the United States made after an allegedly unlawful arrest must be excluded as evidence in a deportation hearing. The Court applied a balancing test which weighed the social benefits of excluding unlawfully seized evidence against the likely costs. On the benefit side was the goal of deterring future unlawful police conduct. On the cost side was the loss of evidence and all of the secondary costs flowing from the less accurate or more cumbersome adjudication that occurs as a result. The Court considered that the costs did not justify the benefits. It also noted that deportation hearings require fewer protections for the individual than do criminal proceedings.<sup>40</sup> It concluded that persons threatened with deportation could not exclude evidence obtained in violation of the Fourth Amendment at civil deportation hearings.

In a later case not specifically about unauthorized aliens but that had important implications for their rights, *U.S. v. Verdugo-Urquidez* (1990), the Supreme Court suggested that unauthorized aliens have no Fourth Amendment rights at all. Before

Verdugo reached the Supreme Court, the Ninth Circuit considered the question whether the Fourth Amendment applied to searches and seizures by U.S. agents of property located in a foreign country and owned by a non-resident alien. The Ninth Circuit reasoned that in its previous ruling in *López-Mendoza*, the Supreme Court had recognized that unauthorized immigrants have Fourth Amendment rights and therefore, that in *Verdugo* it was “difficult to conclude that *Verdugo-Urquidez* lack[ed] these same protections” since *Verdugo* was legally present in the United States.

In its review of *Verdugo*, the Supreme Court disagreed. Justice Rehnquist stated that the issue in *López-Mendoza* had been a narrow one—whether the exclusionary rule applied in civil deportation hearings—and “did not encompass whether the protections of the Fourth Amendment extend to [unauthorized immigrants] in this country.”<sup>41</sup> The Court noted that the Fourth Amendment extends only to “the people,” which “refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” The Court reasoned that if the framers of the Constitution had intended the Fourth Amendment to be more universal in its application, they would have used the term “persons” as they did in the Fifth and Sixth Amendments.<sup>42</sup> The Court seemed to have concluded that Fourth Amendment protections extend only to those “people” who have “substantial connections” with the United States.<sup>43</sup>

Between the *Almeida-Sánchez*, *Ortiz*, and *Brignoni-Ponce* at one end, and *Delgado* and *Verdugo-Urquidez* at the other, the U.S. Supreme Court has shifted away from the initial presumption that immigration officers are bound by traditional Fourth Amendment requirements. In so doing, it has made distinctions among various classes of persons to determine whether the Fourth Amendment applies to them. The Court has given considerable latitude to immigration law enforcement officers, even as it has refused to abandon explicitly the requirement that searches and seizures must be individualized under some circumstances.

## **Immigration Aspects of Other U.S. Legislation**

Two important U.S. laws enacted in 1996, other than IIRIRA have significant provisions relating to immigrants. The first of these is the welfare law (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), and the second the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA). In addition, the appropriations process has an important influence on immigration matters. Most immigration matters are within the purview of the two judiciary committees in the House of Representatives and the Senate, but the budget and appropriation committees of the two houses have great influence. Related legislation, even if it contains immigration provisions, comes under the primary purview

of the relevant committee for that subject, such as the House Ways and Means Committee for welfare matters.

Under the welfare bill, illegal immigrants are ineligible for most public benefits. For the most part, this was the case before the legislation. Illegal aliens remain eligible for emergency Medicaid, school breakfast and lunch programs, soup kitchens, public health assistance for immunizations, disaster relief, and certain housing benefits if receiving them on the date of enactment of the legislation.

More to the point, therefore, because the prohibitions are new, are those directed against legal immigrants. They are barred from receiving Supplemental Security Income (SSI), food stamps, and Medicaid until citizenship or until the immigrant has worked 40 qualifying quarters and did not receive any Federal means-tested program during any such quarter. There is an exception for refugees, asylees, and individuals granted withholding of deportation during their first five years in the country and for veterans and active duty service personnel. States have authority to determine eligibility for Aid to Families with Dependent Children and state welfare programs. The immigration legislation amended the welfare law to permit battered women to receive public benefits under certain circumstances.

Legal immigrants will be subject to deeming rules in determining eligibility for federal programs until citizenship or until the immigrant has worked 40 qualifying quarters and did not receive any Federal means-tested program during any such quarter. This means that affidavits of support signed by those who sponsor immigrants for admission are legally enforceable. States have the authority to limit eligibility or to deem sponsor income and assets, with similar exceptions.

Governor Wilson, who had been prevented by the courts from implementing many of the provisions of Proposition 187, used the provisions of the welfare legislation to accomplish many of the same objectives. Less than a week after the welfare bill became law, he issued an executive order to state agencies and state-supported universities to cut off benefits to illegal aliens.

When he signed the welfare legislation, President Clinton stated he would try subsequently to soften the impact on noncitizen legal residents. The Republican chairman of the House Ways and Means Committee, Bill Archer of Texas, was quoted as saying that if the president wants to undermine and weaken the bill by allowing noncitizens to receive welfare payments, "I will fight to protect the taxpayer."<sup>44</sup> Nevertheless, some restitution of benefits was included in the 1997 legislation to reduce taxes and balance the federal budget by the year 2002. Restoring full benefits to noncitizen legal residents would require finding an estimated \$20 billion elsewhere in the budget, either by reducing other programs or raising new revenue, and this is therefore unlikely.

The AEDPA of 1996 was enacted to take effect in April 1997 and it provides the basis for expedited deportation of persons considered criminal aliens. It

prohibits the Attorney General from releasing from custody any criminal alien deportable for having been convicted of either two crimes involving moral turpitude within five years of entry, a firearms offense, a drug offense, and aggravated felony, or a security-related crime. In earlier legislation, the Board of Immigration Appeals could suspend forced removal of an alien who has become acclimated to the United States on the grounds that this would inflict great hardship, but under the AEDPA hardship will no longer be a criterion for suspending forced removal. The definition of aggravated felony was expanded in the AEDPA to include, among other offenses, theft or receipt of stolen property for which the term of imprisonment is five years; and forgery, counterfeiting, mutilating, or altering a passport in violation of the Immigration and Nationality fraud provisions for which an 18-month sentence is imposed.

Like the IIRIRA discussed previously, AEDPA precludes judicial review of administrative decisions, such as final orders of deportation of most criminal aliens and places strict limits on issues to be considered in a *habeas corpus* review. This removes many critical legal safeguards available to citizens.

When provisions on immigration and treatment of immigrants, those in the United States legally and illegally, and on refugees and asylees, are scattered in many bills, inconsistencies and anomalies are sure to arise. This is particularly true when compromises on complex legislation are reached at the 11th hour, as was the case for the immigration and welfare laws. This is why a bill to deal with technical corrections was necessary in the new Congress. The more widely spread across many laws are provisions dealing with immigration, the more complex it becomes to make changes. The technical bill was vetted across the government in the Departments of Agriculture, Education, Health and Human Services, Labor, Justice, and the Social Security Administration. Such legislation often goes beyond technicalities.

## **Interplay between Federal and State Actions in the United States**

Control of borders is a federal responsibility, a fact that contributed to the delay in implementing the legislation that grew out of Proposition 187. However, once in the United States, the bulk of the impact of immigration falls on those places where the immigrants live, the states and localities. Most public services that are provided are done at the expense of the states and localities. Because the impacts differ among the states, there is no single view on such issues as welfare, education, health care, or even on attitudes toward welcoming or resisting immigrants. The differences among the states may become even more sharp in the future now that many welfare decisions are being decentralized.

The proposed Gallegly amendment on education brought out these differences quite vividly. Representative Gallegly, a Republican, is from California and his proposal to deny education to illegal alien children probably represented the majority view in that state. Senators Gramm and Hutchison, both Republicans from Texas, represented a different viewpoint, one shared by that state's governor, George W. Bush, also a Republican. The speaker of the House of Representatives, Republican Newt Gingrich supported Gallegly. He phrased his position as follows: "California decided by statewide referendum not to pay for these benefits; this should be its right. Texas, on the other hand, has chosen to pay for these benefits; this also should be its right."<sup>45</sup> The Texas position was not always thus, of course. The leading U.S. Supreme Court decision requiring the education of illegal alien children, *Plyler v. Doe*, grew out of a case brought against a Texas law of 1975 denying such education.

A number of states have brought suit to recover costs they must bear for providing services to illegal aliens, all unsuccessful thus far. In their letter of opposition to the Gallegly amendment, Senators Gramm and Hutchison stated their support for federal funding of these education costs. A disproportionate share of these education costs fall on seven states: California, New York, Florida, Illinois, Texas, New Jersey and Arizona.

The Republican Mayor of New York City, Rudolph Giuliani, has argued against welfare cuts for most legal aliens. He cited data showing that recent legal immigrants use public assistance less than native New Yorkers (11.2 versus 13.8 percent), which is the reverse of the data cited by California. A proposal to deny public services to illegal immigrants was killed in Florida in April 1995 based on opposition from Cuban-American legislators. Instead, a commission was established to study the issue.<sup>46</sup>

When Proposition 187 passed in California, there were predictions that the sentiment embodied in this referendum would sweep across the country. There were echoes of support in other states and at the federal level, but there also were manifestations of opposition to this approach. The variety of state and locality responses is a reflection of many distinct circumstances across the nation. Some of these disparities are different economic situations among states and localities, unique ethnic mixes, varying power relationships between Latinos and others, and non-uniform perceptions of self-interest.

## **Nationals and Foreigners in Mexico**

Immigration issues and immigration legislation have a radically different significance in Mexico than they do in the United States. Mexico does not view itself as a country of immigration. Immigrants in 20th century Mexico have been

few in number and of marginal demographic significance. On a few occasions, however, Mexico opened its doors to immigrants. This took place at the time of the Spanish Civil War, before and during World War II, and in the 1970s and 1980s for South and Central Americans. The 1990 census showed that less than 0.5 percent of the national population is foreign-born, compared to 9 percent in the United States (in 1995). Though few in number, foreigners traditionally have come with capital and skills to Mexico, and therefore have had a salutary impact on the country's economy disproportionate to their number.

The Mexican Revolution of 1910 was in part a negative reaction to the enormous concentration of land, industry and wealth in Mexico in the hands of a small number of persons, many of them foreigners. The Constitution of 1917 and the legislation adopted in later years reflected these concerns. The new legislation curbed the property rights of foreigners. Mexico's foreign policy at that time began to promote the idea of noninterference in the domestic affairs of states and the doctrine that foreigners, as part of the condition of their admission, would have to renounce the right to appeal to their home governments for support beyond the rights already established under Mexican law.

Mexican legislation significantly curbed the right of foreigners to own real property, especially along the coasts and near international boundaries; made it difficult to naturalize; and established in the Constitution the right to deport foreigners for violations of Mexican law. Post-Revolution governments reversed the pre-1910 policy of encouraging foreign immigration. These governments also were disturbed by the growing emigration to the United States and the lack of population of certain parts of Mexico and began to encourage the repatriation of Mexican emigrants. The experiences of the late 19th and early 20th century turned Mexico away from the promotion of immigration and toward coping with the growing flow of nationals departing the country to the north.

Because Mexico is essentially a country of emigration of nationals rather than of immigration of foreigners, much of what is important in migration laws and policies relate to how nationality is defined and what are the rights of Mexican nationals while traveling and in the border regions.

Under Mexico's laws, all residents have freedom of movement within the territory. Like many other countries, Mexico has formal requirements for the entrance and departure of nationals and foreigners. (The United States, by contrast, does not have formal departure requirements.) However, in practice, many of these formal requirements are often ignored and are probably not enforceable, especially when departures take place away from designated exit points. In any case, the constitutional right to free transit has been interpreted to mean the right to leave the country, regardless of compliance with formal requirements. This interpretation has not been tested in the Mexican courts. This interpretation was modified during the

Bracero Program when the Mexican government made modest efforts to patrol its side of the border to prevent unauthorized departures and again when it briefly used armed force to prevent the unilateral recruitment of *braceros* by the United States. The Mexican national consensus since the modest efforts during the Bracero Program has been that the Constitution prevents the government from stopping the departure of nationals from its territory.

In December 1996, Congress passed constitutional amendments often referred to as “dual nationality,” whereby Mexicans who take another nationality at the time of foreign naturalization do not automatically lose their Mexican nationality and citizenship. As a result, once the amendments become effective, Mexican-born persons naturalized as citizens of another country will no longer be treated as foreigners upon their return to Mexico and their property rights and other rights will not suffer. (See Volume 3, pages 1249 to 1250, on the unrenouncability of the Mexican nationality).

### ***Immigration Law in Mexico***

Mexico’s immigration law traditionally has been enacted within the framework of what is termed “population law,” which includes policies designed to influence population dynamics, the promotion of settlement of sparsely populated areas, and the distribution of Mexico’s resident population. Immigration is thus an aspect of population policy and this approach underscores the view that Mexico is more concerned with population growth and distribution than with the admission of foreigners.

The current population law in Mexico dates from 1974, but this law has been amended on several occasions, most recently in 1990, 1992 and 1996, to liberalize the entry of certain categories of foreigners and to strengthen the penalties against those who traffic in migrants.

A feature of Mexican immigration policy is that it gives priority to foreign applicants who have needed skills from the standpoint of Mexico’s economic development. Mexico is a country with a shortage of certain kinds of skilled workers, and although immigration policy has not encouraged the *recruitment* of such workers, it has given priority to their admission. In many instances, skilled immigrant workers are required to certify that they will participate in the training of domestic workers who wish to acquire these skills.

Another feature of Mexican immigration policy, and perhaps the most important, is that the legislation indicates goals and priorities without specifying the number or proportion of immigrants to be admitted under each category. Indeed, Mexican immigration law gives great administrative discretion to the executive branch to decide on a case-by-case basis whether particular decisions are consistent with the overall policy goals.

Like the United States, Mexico assigns a high priority to the admission of the immediate relatives of Mexican nationals and resident immigrants. It appears that the majority of the relatively small number of immigrants (*inmigrantes e inmigrados*) admitted each year are essentially based on family reasons.

Immigration policy and practice has undergone subtle but important changes since about 1980. The impetus for change came with the mass movement of Central Americans into Mexico, especially near the southern border. Suddenly, Mexico seemed to be not just a country of mass emigration, but also of substantial immigration—at least of asylum seekers. Moreover, Mexico experienced the new situation of many foreigners entering illegally in order to proceed to the United States. Mexico, therefore, modified its legislation and administrative procedures to deal with these new circumstances by creating the category (*calidad*) of refugee (1990) and increasing penalties for illegal trafficking in migrants in and out the country (1990 and 1996).

Another event which provided stimulus for modifying immigration legislation was the need to accommodate to the mobility of an open economy (and of NAFTA), the influx of investment, and the provision of services. Mexican law was modified (1992) to facilitate the entry of business visitors, investors, technicians, professionals, and others to conduct business in Mexico. Special facilities are given to American and Canadian businesspersons to enter Mexico. In the year April 1994 to April 1995, the number of U.S. and Canadian businesspersons entering the country on a temporary basis (FMN) was a little more than 47,000, more than 95 percent U.S. citizens.

### ***Professionalization of Immigration Administration in Mexico***

The new circumstances of the past decade and a half, and the parallel decision of the Mexican government to engage the United States more actively in migration matters, have contributed to the increasing professionalization of the administration of Mexican immigration policy. In 1993, the National Institute of Migration was created. One of the main objectives of current migration policy is to improve the services required by immigrants by simplifying regulations and procedures, upgrading the quality of personnel, and strengthening the administration, and the fostering a culture of service and probity.<sup>47</sup> Thus, the Secretaría de Gobernación, together with the National Commission for Human Rights, has issued a brochure designed to prevent the violation of human rights of migrants (*Cartilla. Guía de Derechos Humanos para Migrantes*). Indeed, it is safe to assume that in shaping migratory behavior, Mexican authorities have in

mind the probability of comparisons between what Mexico demands for its citizens and the way Mexico treats its immigrants, be they authorized or unauthorized.

## **Other Actions to Encourage or Discourage Migration**

### **Mexico**

#### ***Discourage Migration: An Elusive Ambition***

As a matter of principle, Mexico has not taken any action to encourage migration. On the contrary, a traditional position is that emigration of nationals is a loss to the country. Therefore, through the years, some actions can be listed that had the purpose of discouraging migration. (Usually this is not the only, nor the most important, purpose.) Most of these actions relate to the promotion of economic development. It is commonly accepted that development is the best, and only, long-term deterrent of mass emigration. All developmental actions are obviously not related to migration. What it means is that since 1965 there have been developmental measures whose goals included keeping would-be emigrants within the national territory. This migratory consideration usually is a minor or indirect one. Migration might play the role of safety valve, but not by design.

#### ***The Border Industrialization Program***

This program, also known as the *maquiladora* program, encourages the establishment of in-bond plants to assemble imported components from the United States to be then exported back. The program was established in 1965 precisely after the termination of the Bracero Program with the intent of absorbing would-be migrants. At the start, this program probably absorbed some local population. The role of this program regarding the dynamics of Mexican migration to the United States is a question that continues to be matter of debate. In any event, the *maquiladora* program employed around three quarters of a million workers at the end of 1996.

#### ***Economic Development in Origin Regions***

After Mexico stopped seeking a renewal of a Bracero Program in the mid-1970s, influential Mexican analysts proposed the establishment of special economic development programs precisely in regions of origin of the migrants. The purpose of these proposals was to keep people in their places of origin.<sup>48</sup> The hope was to obtain additional or special resources (from the outside) to be channeled to

the emigration regions. These proposals never prospered. However, they show a continuity in the Mexican attempts to discourage emigration.

## ***NAFTA***

One major action undertaken to discourage migration is NAFTA. Of course, migration was not an overriding consideration to negotiate NAFTA. However, the argument can be made that migratory considerations played a role in strengthening the case for NAFTA. NAFTA is a development strategy that has a built-in, indirect migratory effect—that price (wage) equalization would, eventually, discourage emigration. This potential migratory effect—even if long term—was useful in “selling” NAFTA.<sup>49</sup> NAFTA has provisions (chapter 16) to facilitate the mobility of technical and business persons, but they are based on a different perspective. This mobility is seen as associated or attached to the increased mobility of capital, services and technology transfers.

## **United States**

### ***Worksite Verifications***

The 1996 immigration legislation establishes three separate pilot programs to confirm employment eligibility. Each has a duration of four years and is to be conducted within a year of enactment of the law in at least five of the seven states with the largest undocumented immigrant populations. Each program is voluntary for most private employers (but not for the executive and legislative branches of the federal government), but mandatory for job applicants.

The first, the basic pilot program, requires new employees to provide their Social Security numbers and, for non-U.S. citizens, INS identifying information. Employers are required within three days of hire to use a toll-free confirmation system to identify the employee’s work eligibility. The second, called the citizen attestation pilot program, is permitted only in states where driver’s licenses and identification cards have enhanced security features. This program is limited to 1,000 employers to be chosen by the Attorney General. The third, the machine readable document pilot program, is similar to the basic program except that the new employee presents a machine-readable Social Security number and the employer’s inquiry is made through a confirmation system using the machine-readable feature of the document. Noncitizens must also provide their INS-issued numbers.

The ease with which documents could be forged was the Achilles’ heel of the employer-penalty program under IRCA. The electronic verification pilots (or EVPs) could be significant ultimately in deterring employment of illegal aliens, but not in the short term. The new pilot programs are seen as an interim measure and depend

on self-certification by the alien. Thus, an alien with a valid Social Security number who claims to be a U.S. citizen will not be detected. The joint electronic verification pilot (JEVP) with the Social Security Administration was put on hold in the final immigration compromise.

The EVP is voluntary and, as of the end of February 1997, some 1,200 businesses were participating. They include meat packing in the midwest, poultry in the Delaware-Maryland-Virginia area and Georgia, and about 75 hotels in South Florida and San Diego. An interesting example among the volunteers is the Northwest Reforestation Contractors Association. Members of the Association claim that many reforestation contractors working for either private timber companies or the U.S. Forest Service and the Bureau of Land Management typically hire aliens illegally in the United States to perform the work, permitting them to underbid those contractors who do not, with no real danger of penalty even after IRCA. The group stated that it tried to work out something with the U.S. government, including the INS, in the years since IRCA, but with no concrete result. The problem was brought to the attention of the Commission on Immigration Reform, and from there to the INS, and the pilot program will include screening for unauthorized aliens on federal intensive-management contracts.

### *Nonimmigrant Visa Overstayers*

The most recent INS estimate of the foreign population illegally in the United States (released February 7, 1997) was five million as of October 1996, and growing by 275,000 people per year. Of the five million, the INS estimate was that 2.9 plus million (59 percent) entered the United States without inspection, and 2.1 million (41 percent) overstayed. The INS estimate was that 2.7 million of the five million were Mexicans.

The INS response to reducing the population illegally in the United States must thus have two separate components, prevention of entry at or near the border and detection of people already in the United States either because they successfully evaded border deterrents or entered with valid visas and then abused the terms of their permission. Extensive investigation to locate the latter is not considered cost effective.

The INS makes a number of assumptions with respect to nonimmigrant visa overstayers. Its February 1997 report states that of the 25 million persons admitted as nonimmigrants in FY 1996, an estimated 98.5 percent will return home. The INS believes that many of those who do not when the term of the visa expires have a pattern of overstaying, returning home after a few years, and then repeating the process. Many, the INS believes, return to work in particular activities in specific locations, and increased inspections are to be conducted at these worksites.

More important, under new procedures, a part of the I-94 form that nonimmigrants must complete at entry will be stapled into the passport for surrender to the airline on departure. Depending on airline cooperation, this is intended to facilitate discovery of overstayers. By means of an on-line system with U.S. consulates, this information will be accessible when the person seeks a new visa. About 60 percent of countries now have machine-readable passports that can be checked at consulates. Armed with this information, the consular officer can then take appropriate action, from a warning, to a fine, to visa refusal. This, as of now, is the thinking about dealing with the visa overstayer problem.

The INS concern is not about overstays of a few days or a week, but rather a pattern of overstaying for a year or more. The system of notifying the INS of overstays using the returned portion of the I-94 form will be tested at five busy airports, with the cooperation of the airlines. This authority already exists in legislation. Depending on the results, the program can be expanded later.

### ***Labor Department***

The Wage and Hour Division of the U.S. Department of Labor has responsibility for enforcing a number of laws which establish standards for wages and working conditions designed to protect low-wage workers. All these laws deal indirectly with immigrant labor, and a number do so directly.

The Division's major task is to insure compliance with the Fair Labor Standards Act and this has implications for immigrant as well as national workers. The Migrant and Seasonal Agricultural Worker Protection Act provides for registration of farm labor contractors, proper maintenance and insurance for vehicles used to transport migrant and seasonal farm workers, maintenance of healthful housing and facilities for these workers, and prior disclosure to workers of employment conditions and agreements. Under IRCA, the Wage and Hour Division was charged with reviewing employer compliance with employment eligibility verification. The Division has authority to inspect employer compliance with worker protections under H-2A (temporary nonimmigrant agricultural workers), F-1 (foreign students), H-1B (foreign specialty workers), and D (foreign crew members doing longshore work) visa programs.

The Wage and Hour Division is working with the INS to coordinate enforcement activities, including inspections, in specific industries that have been found to violate immigration and labor laws (such as garment manufacture, janitorial services and agriculture) in seven targeted deterrence zones (in California, Texas, Arizona, New Jersey, New York, Florida and Illinois).

There are thus two lines of protection against hiring and/or exploiting workers illegally in the United States, the employer-penalty program initiated by IRCA,

and the enforcement efforts of the Labor Department which can uncover violations of wage-and-hour laws that affect immigrants as well as nationals. The two can work in tandem, as is now the practice in the targeted deterrence zones; but each program has its limitations. Those of the worker-penalty program under the aegis of the INS are discussed above.

The Wage and Hour Division is thinly staffed to carry out the tasks assigned to it. Its budget authority permitted a staff of 1,289 full-time equivalents in FY 1996, which is lower than in any year of the last five. Enforcement actions completed were lower in FY 1996 than in any of the last 10 years. This means that the Division cannot effectively carry out its responsibilities without substantial voluntary compliance. This need for voluntary compliance exists as well for the INS in its enforcement of the employer-penalty program, including the new electronic verification system pilot programs.

## **Reactions and Counter-Reactions**

### **Cooperative Activities**

The increased institutionalization of relations between Mexico and the United States in the last few years has facilitated cooperation on migration matters. The cooperation has dealt mainly with safety at the border, repatriation and education of immigration officials.

Cooperation dealing with safety at the border consists mostly of sharing information between various police and law enforcement agencies of the two countries, strengthening the links between Mexican consular officers in the United States, and prosecution of traffickers in migrants. The initiatives seek to achieve a safer border and a more ordered repatriation process, including procedures to forewarn authorities of the place and time of repatriation of undocumented immigrants at the border and to carry out an internal repatriation program. The education activities include the participation of Mexican officials in the Citizens Advisory Committees, mutual visits between INS and INM personnel, including the teaching of courses on Mexican culture by Mexican instructors to INS personnel and vice-versa.

### **Reactions to Unilateral Initiatives**

Reactions to new initiatives can be quite important.

### ***Increase in Naturalizations***

A number of U.S. actions stimulated legal resident aliens from Mexico (and other countries) to naturalize. These actions already have been discussed. They include

Proposition 187, concern over what was seen as growing anti-immigrant sentiment in the United States, and the removal of many benefits to noncitizens under the welfare legislation. These measures led also to the conviction that the best way to combat future actions of this nature was through empowerment at the ballot box, and a necessary first step for this is U.S. citizenship. This reaction of Mexican Americans and other Latinos had considerable impact on the 1996 elections and can have even more profound implications for the direction of U.S. politics in the years to come.

More Mexicans were admitted as legal immigrants in the years 1970 through 1994 than any other nationality but, according to the INS, only 19 percent had naturalized. This was one of the lowest percentages of naturalizations of any country. In U.S. fiscal year 1993, which antedates the passage of Proposition 187, the number of Mexicans naturalized totaled 23,630. This figure jumped to 39,294 in FY 1994, then to 67,277 in FY 1995, and a verified minimum of 232,702 in FY 1996. The impulse to naturalize has not been confined to Mexicans; the total number of application in FY 1995 was under one-half million, which jumped to 1.3 million in FY 1996, and is projected to exceed 1.8 million in FY 1997. The earlier annual average was 300,000.<sup>50</sup>

INS Commissioner Doris Meissner has said she wished to activate the “N” in the Immigration and Naturalization Service. The INS, consequently, set up a procedure to reduce the time to no more than six months from application to naturalization. This goal has since slipped to nine months or more. In any event, the INS has been criticized for rushing naturalizations to influence the 1996 elections, a charge vehemently denied.

### *English Language Usage*

The use of Spanish in the United States grew as Latin Americans constituted increasing proportions of legal immigration. During the 1980s, they represented almost half the legal immigrants, followed in numbers by Asians. Affirmative action programs, particularly under the stimulus of the Great Society in the 1960s, led to bilingual education programs. The U.S. Supreme Court, in *Lau v. Nichols*, ruled in 1974 that providing instruction only in English denied equal educational access to children who do not speak English well.

There has been a reaction to this on two grounds—fear that the preeminence of English in the United States would be diminished; and an opposite concern, that the children themselves would be disadvantaged by an inadequate ability to speak, read, and write English. Measures to designate English as the official language have been passed in 23 states, and may arise at the federal level.<sup>51</sup>

On December 4, 1996, the U.S. Supreme Court heard a case that arose from a constitutional amendment passed in Arizona in 1988 designating English as the official

state language and requiring government workers to conduct state business only in English. This was challenged by a state worker who often used Spanish in her job as an insurance claims manager. As the case proceeded, the amendment was struck down in the courts. Subsequently, the state employee who initiated the challenge left her job and state officials decided not to defend the measure. However, the group that had campaigned originally for the amendment, Arizonans for Official English, stepped in to defend it. At the Supreme Court hearing, several justices raised questions as to whether the case was moot, and in any event whether Arizonans for Official English had any standing. Justice Anthony Kennedy told the attorney for the Arizona group: "The voters didn't give any authority to you." The Supreme Court on March 3, 1997, unanimously threw out earlier judgments on the grounds that the case was moot when the employee left her job. The court also questioned whether Arizonans for Official English could act as agents for people of Arizona.

### ***Mexican Constitutional Change Permitting Dual Nationality***

As noted earlier, in December 1996, the Mexican Congress passed constitutional changes that would allow Mexicans to keep their Mexican nationality even though they opt for acquiring another. These changes took the form of making Mexican nationality unrenounceable, except in specified circumstances. This Mexican reaction complements earlier steps to provide information (although not encouragement) about the U.S. naturalization process.

The details of how dual nationality would work are still unclear. The key stated motive was to permit Mexicans who naturalize in the United States to retain property rights in Mexico. (See earlier discussion on the limits imposed on foreigners to own property in Mexico under the 1917 Constitution.) It is unclear whether the dual nationality would permit voting in Mexican elections. In practice, the decision on retaining Mexican nationality even as one naturalizes in another country is for Mexico to make. Mexico is not unique among countries that do not require, or do not recognize, renunciation of nationality; Great Britain, for example, does not recognize the giving up of allegiance by its nationals.

The Federation for American Immigration Reform (FAIR) criticized the Mexican action on the grounds that it would stimulate divided loyalties and undermine assimilation of Mexican immigrants. FAIR said it would seek legislation to annul U.S. citizenship of any person who exercises foreign citizenship.

### ***Mexican Absentee Voting***

The suggestion that Mexicans living outside the country be permitted to participate in Mexican elections via absentee voting raises less emotional issues than

those surrounding citizenship, but can lead to a negative reaction. The United States cannot object in principle to absentee voting since it is practiced in U.S. states. However, the sensitivity relates to the rallies and other campaign events at which the Mexican flag is shown prominently. An issue was made of this type of display by the group favoring Proposition 187 in California and this fact may have had some influence in the final outcome.

Yet, it is hard to argue that Mexican nationals living in the United States should be disenfranchised. The nub of this issue would seem to be the way absentee voting is handled, at least at the outset of the practice.

### ***Mexican Use of Diplomatic Notes***

In cases of incidents or specific actions, such as “Operation Hold the Line,” a common Mexican reaction is the use of diplomatic notes, public protests or calls for consultation. In many instances this is the end of the affair, without a reversal of the triggering action. But in other instances, a process with cooperative ingredients follows.

## **The Changing Relationship**

Relations between the Mexican and U.S. governments underwent a watershed during the 1989-1993 period. This relationship evolved from a non-engagement approach to a cooperative problem-solving problem attitude. For the first time in the history of the bilateral relationship, both federal governments began to foster and facilitate economic integration instead of repressing it. For Mexico, this represented a departure from the traditional defensive attitude, and the recognition of economic interdependence; and for the United States it represented a less confrontational stance with its southern neighbor.

During the administrations of Carlos Salinas and George Bush, the two governments devoted an extraordinary amount of attention to each other and sought to institutionalize their inter-governmental affairs. The process of institutionalization involved an increase in governmental contacts, the development of new rules governing U.S.-Mexico bilateral relations, and the creation of more effective consultative mechanisms. The empirical evidence that demonstrates this process of institutionalization is indeed impressive. The number of officials involved in the bilateral relationship increased dramatically. Almost every executive agency was drawn into the relationship. The linkages between U.S. and Mexican governmental agencies grew stronger and more direct; and contact between the agencies was increasingly conducted independently of the State Department and the Foreign Affairs Ministry in Mexico. Numerous cooperative and inter-institutional agreements were signed, creating various official working groups and bilateral commissions, which were

developed to support increased consultation. NAFTA alone has led to the creation of 22 committees and working groups.

This formalization of the bilateral dialogue and consultation has also permeated the migration agenda. During the last five years, there has been an upsurge of mechanisms for dealing with the complicated immigration flow coming from Mexico. The Working Group on Migration and Consular Affairs of the Binational Commission exemplifies this tendency to formalize consultation. The Group was created in 1987 as part of the Binational Commission. In 1992, it began to meet independently of the Commission, and during the past two years has met eight times. The highest level officials dealing with migration affairs participate in the Group: the INS Commissioner, the Assistant Secretary for Inter-American Affairs at the State Department, and the Mexican Undersecretaries of Migration at the Interior Ministry, and Bilateral Affairs at the Foreign Ministry, as well as more than 20 officials from the two countries. The Group has become a useful mechanism for bilateral dialogue and for coordinated efforts between the officials of both countries. The proposal for this Binational Study was formalized at the first meeting of the Working Group on Migration and Consular Affairs in Zacatecas, Mexico, in February 1995.

Other examples of this trend toward the formalization of bilateral consultation are the Border Liaison Mechanisms which, during the last three years, have included Mexican participation in the Citizen's Advisory Panel, and the Mechanism of Consultation on the Activities of the INS and Consular Protection, created in 1996. In May, 1996, Secretary of Foreign Affairs José Angel Gurría, and Secretary of State Warren Christopher signed a Memorandum of Understanding dealing with the protection of the rights of Mexican nationals in the United States. The MOU states seven principles and goals: First, to permanently include in the agenda of the Bilateral Working Group on Migration and Consular Affairs of the Binational Commission issues dealing with consular protection and human rights. Second, to notify any individual detained by migration authorities of his/her rights and legal alternatives, including the right to establish contact with his/her consular representative. Third, to facilitate communication between consular representatives and detained individuals. Fourth, to facilitate the presence of consular officials in judicial proceedings. Fifth, to bring to the attention of the Working Group on Migration and Consular Affairs reports on human rights written by the Border Liaison Mechanism, and the Mechanism of Consultation on the Activities of the INS and Consular Protection. Sixth, to promote transcultural understanding. Seventh, to promote high-level cooperation to facilitate the investigation of violent incidents related to consular protection.

Mexico has experienced profound changes in its economic and political structure during the past 15 years and these have affected relations with the United States.

These attitudinal changes in Mexico had a significant impact on U.S. thinking as well, drawing the United States closer to Mexico in its policies. These changes are also visible in the Joint Statement on Immigration signed by the two Presidents in May 1997. All is not sweetness and light, as the March 1997 drug certification conflict demonstrated, but even there a compromise acceptable to both nations was worked out.

## **NAFTA and Institutional Building**

The changes in the Mexico-U.S. relationship during the past decade and a half have been breathtaking. The most important change is the entry into force of NAFTA on January 1, 1994. Regardless of one's opinion on the desirability of NAFTA, it is clearly an important agreement, probably the most important between the two countries in this century. Its significance transcends economic integration as such, as important as this is, because it forces greater cooperation than had existed earlier on other matters as well.

Mexico and the United States, as the title of Alan Riding's book put it, were "distant neighbors" for many years.<sup>52</sup> Mexican foreign policy emphasized independence from the United States. This showed up in secondary ways, such as opposing U.S. initiatives in international organizations; Mexico voted consistently in opposition to the United States in the United Nations General Assembly. On more profound matters, such as limiting foreign direct investment, Mexican policy was designed primarily to favor nationals over foreigners, but also to limit U.S. influence. The goods and services excluded under Mexico's import-substitution policy, to the extent that imports were less than they might otherwise have been, were primarily from the United States.<sup>53</sup> This also meant that Mexico exported less of its goods to the United States than it later did under a policy that emphasized more competitive industry.

Mexico, before the unilateral tariff reductions made prior to NAFTA, exported few manufactured goods. Today, manufactures dominate Mexico's exports. Mexico looked within the country for its economic growth before the changes that began in the 1980s. The domestic market is still more important than the export market, but not as overwhelmingly as before. Mexico's macroeconomic economic recovery in 1996 was largely export-led. About 80 percent of Mexico's exports now go to the United States. Merchandise exports are now equal to about 30 percent of GDP, which means that exports to the United States now represent some 25 percent of GDP.

The majority of manufactured exports are intra-industry in nature, and much of this is intra-firm. Increasing amounts of total trade are in intermediate products which serve as inputs for further production in the other country. The intra-firm

trade is evidence of much co-production, of parts produced in one country for assembly or further processing in the other.

NAFTA represented a conscious policy by Mexico to take advantage of the large U.S. market next door. It was predicated also on the desire to attract foreign direct investment, and traditionally two-thirds of this came from the United States. The cooperative economic relationship could not succeed unless the political relationship also became closer, and this has occurred. This does not mean that all differences have been eliminated, but rather that differences are not sought out for their own sake.

These changes in economic relations and political interactions are likely to become more solid with the passage of time and the entrenchment of vested interests in production and trade in the two countries. Durability depends also on the construction of institutions and these have flourished since NAFTA. As noted above, the once formal intergovernmental relations have become more flexible. The Mexican authorities now lobby in the United States, which they did not prior to the NAFTA negotiating process. The Mexican government no longer operates solely via its Secretariat for Foreign Relations (SRE) communicating with the State Department, but rather across the spectrum of U.S. public and private agencies and the Congress. On migration, it is worth noting the participation of the Secretariat for Government Affairs (Gobernación). Counterparts from the two countries communicate directly by telephone, fax, and e-mail, when earlier everything went through the SRE.

This greater intimacy permits easier communication on most subjects, from drug trafficking to labor and environmental relations. Increased dialogue on immigration matters also stems from a combination of this new institutional flourishing and the Mexican concern over the anti-immigrant sentiment reflected in Proposition 187, and the expectation that the United States was becoming more serious in preventing entry over the border without documents. The principal fruits of this dialogue have been greater attention on protecting the rights of Mexicans, legal and otherwise in the United States.

The increased closeness of the economic relationship and its salience for Mexican economic recovery and growth also meant that it became important to handle other problems in a way that avoids prejudice to economic cooperation. This was one basis of the shift from political distancing to greater dialogue. It has also meant that when migration incidents flare up, as they did in Riverside County in 1996, the Mexican authorities prefer to handle these calmly. The Mexican media reacted—overreacted—harshly to the two incidents in Riverside County, but the government sought correctives. The language used domestically to calm the political furor was stronger than the action taken bilaterally with the United States, which was designed to find satisfactory solutions looking to the future.

The greater intimacy has not eliminated all conflict. Trade disputes still arise—as one would expect from increased trade. The contentious issue of certifying Mexico for cooperating with the United States to combat drug trafficking which President Clinton did as of March 1, 1997, brought out long simmering differences and this issue has the potential of limiting cooperation between the two countries on other issues as well. There is still considerable opposition to NAFTA in both countries, and this could lead to serious misunderstandings. History has not been erased by recent bilateral interactions, but a cooperative layer has been superimposed on old mistrusts.

### **Immigration Provisions of NAFTA**

Immigration is not dealt with in NAFTA except for temporary business visitors, but the relationships spawned by the agreement have their effects on the bilateral immigration relationship. This binational report would not have been possible in the pre-NAFTA period, but it is not remarkable today. The immigration relationship is not a rose garden—the asymmetry makes this impossible for now—but the dialogue is civilized.

Chapter 16 of NAFTA permits the entry into each of the three member countries of business persons and technicians from the other two. For the United States, this temporary entry extends to a number of categories of business visitors (B-1); traders (E-1); investors (E-2); intracompany transferees (L-1); and professionals (TN). The TN category (Trade NAFTA) is available only for citizens of Canada and Mexico who meet certain educational and experience requirements. A TN visa is issued for one year and there are no limits on the number of allowable extensions.

A transitional annual limit of 5,500 was established for Mexican professionals who can enter the United States under the TN category. There is no limit on Canadian TN professionals. The limit can be increased by mutual agreement between Mexico and the United States and will expire in 2003, unless the two countries agree to eliminate it earlier. Canadian TN professionals remain exempt from the TN visa requirement (that is, they can show up for admission and be admitted), whereas Mexicans must first obtain a visa. The reason for the disparate treatment of Mexicans and Canadians apparently was based on lesser experience with Mexican TN professionals and the desire to let the number build up on a gradual basis. If need be, Mexican professionals can still enter under the H-1B category, for which there is a worldwide limit of 65,000, if this limit has not been breached. Mexico has tried, without success thus far, to get a freer regime, including permits for those accompanying the business persons admitted to the United States under NAFTA chapter 16.

## **Tension between Free Trade and Immigration Restrictions**

The current situation is that goods and services can pass more or less freely across the Mexican-U.S. border, as can capital, but not labor. The reminder is needed that NAFTA is a free-trade area and not a common market within which all factors can move freely. Mexico, in the buildup to the NAFTA negotiations, raised the issue of labor inclusion more broadly than in chapter 16, but this was rejected by the United States on the grounds that this would not be accepted by the Congress.

Does the disparate treatment of goods, services, and capital, as distinct from labor, augment the tension that exists in any event on the immigration issue? The argument that it does is made on the theoretical ground that if one factor (capital) can move freely, then the other (labor) should be able to do so as well. This, however, may be more of a debating point than a solid argument. People are different from capital, even if one can partially substitute for the other. Trade can also be a partial substitute for the movement of people.

The argument that the tension on immigration is not heightened by NAFTA is that free movement of goods, services, and capital can ease the pressure on labor migration, at least over time.

In any event, the idea of completely free movement of people between the two countries is moot, certainly for now. There are proposals from time to time for a guest-worker program with Mexico for the admission of less-skilled workers; a modest one exists between Canada and Mexico. Such proposals are motivated not by the theoretical argument for equal treatment of all factors, but rather the inability of Mexico to control emigration and of the United States to completely seal the border.

## **Conclusions**

The basis for each conclusion is contained in the previous discussion.

## **Episodic Nature of U.S. Responses**

Responses to curtail unauthorized immigration are episodic, most intense when the U.S. economy, or the economy of California because of its importance as an immigrant-receiving state, or the economy of Mexico, falters. Historically, the intensity of the anti-immigrant effort has diminished as economic conditions improved. This suggests that changes in immigration practices may be more feasible when the two economies are prospering and tensions are minimal.

## **Official Action and Effectiveness of Immigration-Restriction in Practice**

In the past, official U.S. responses to deal with the inflow of unauthorized immigrants were consciously riddled with loopholes or not carried out with vigor. The Texas Proviso was the classic example of this. More recently, the employer-penalty provisions of IRCA were compromised at the outset by failure to have an effective way to identify persons entitled to work in the United States, and then further weakened by lax enforcement. It remains to be seen whether the current efforts to deter illegal immigration will be more durable than in the past and if they will be pursued more vigorously.

## **Mexican Engagement**

One new element for dealing with the illegal-immigrant inflow into the United States is the shift in the Mexican position from a “no-policy” policy, or deliberate non-engagement, to a stance of increasing engagement with U.S. counterparts. The ultimate effect of this engagement is hard to forecast because the Mexican priority is to protect the rights of its nationals in the United States, while that of the United States is for the Mexican authorities to actively deter the unauthorized movement of persons. Each side has responded to some extent to the priorities of the other. The U.S.-Mexico Memorandum of Understanding of May 1996 provides improved assurance of humane treatment of Mexican migrants in the United States; and Mexican legislation to more severely punish nationals who traffic in unauthorized migrant movement has a direct deterrent motive. However, these actions, as useful as they are symbolically, are unlikely to have much effect on unauthorized migrant movement over the border.

## **Greater Role for State and Local Authorities**

Because immigration is a federal responsibility in both countries, most bilateral discussion takes place at this level. However, the impacts of migration are felt primarily at state and local levels. In addition, many of the issues affected by migration, such as welfare in the United States and education in Mexico, are being devolved increasingly to state and local levels. State border governors from the two countries meet regularly. These considerations lead to the conclusion that it may be useful to bring state and local authorities more actively into bilateral immigration discussions.

## **The Role of Nongovernmental Organizations**

These groups have increased their activity. Proposition 187 was stimulated by an NGO initiative, although it obviously received considerable official stimulus from the support of Pete Wilson, the governor of California. The constitutional case against Proposition 187 was led by the American Civil Liberties Union. Many U.S. NGOs were involved in the debate on welfare and immigration legislation. Mexican NGOs pressed their government to be more vigorous in protecting human rights of Mexican nationals in the United States.

## **Interplay between Economic Integration/ Political Cooperation and Immigration Control**

The negotiations for and then the entry into effect of NAFTA changed the context of Mexican-U.S. relations. What earlier had been a distant relationship, with few institutionalized links, was transformed into a bilateral partnership replete with public and private institutional contacts. NAFTA also forced a more cooperative political relationship in order to avoid contamination of the increased economic interaction by political disputes.

The recent trend towards the institutionalization of relations between the Mexican and the U.S. governments has also permeated the migration issue area. In the last five years, there has been an upsurge of initiatives to formalize the bilateral dialogue and consultation on migration between Mexican and U.S. officials. It is still early to assess the effectiveness of this bilateralism for preventing or solving migration disputes. It is noteworthy, nevertheless, that this trend occurred in a period of intense immigration debate in the United States, and when the mood of the nation has apparently become less receptive to immigrants.

While the bilateral engagement on migration issues began before NAFTA went into effect, cooperation on this issue also picked up after NAFTA. Mexico's decision to engage in dialogue on migration matters is likely to increase the pressure on its government to become more active in the day-to-day administration of these issues.

## **Border Opening for Commerce and Investment But Not People**

Because of NAFTA, the importance of the U.S.-Mexican border is diminishing for the flow of goods, services, and capital. In addition, measures have been taken by the United States to facilitate legal human flows across the border. By contrast, the United States simultaneously is increasing its efforts to control unauthorized

entry across the border. This has the potential for increasing binational tensions, as highly publicized incidents of the effects of this greater surveillance occur, such as those in Riverside County, California, in 1996. This tension between opening for commerce and investment and closing for unauthorized border crossing is unlikely to disappear in the near future and the policy task is to minimize the inherent friction.

### **Human Rights Protection**

The Mexican government continues to emphasize a traditional preoccupation with violations of the human rights of its nationals in the United States, particularly when instances of violence associated with the activities of U.S. law enforcement bodies come to light. Successive Mexican administrations have strengthened the network of consulates in the United States and have made these the forward arm of policy to protect the human rights of Mexican nationals. At the federal level, the U.S. government has been more sensitive to the Mexican demands for human rights protection. Much of the increased binational dialogue on migration issues deals with this theme.

### **Sensitivity Training**

Violations of the human rights of Mexicans in the United States are likely to receive much media attention in Mexico and damage the bilateral relationship. Sensitivity training of U.S. immigration and police officials to minimize such incidents is thus a good investment.

### **Immigrant Access to Social Services**

Recent political trends in the United States have been running in the direction of excluding immigrants, authorized or not, from receiving tax-supported social services. Examples of this tendency include Proposition 187 and provisions of both the welfare and immigration legislation of 1996. Proposition 187, because it was seen in Mexico as being directed against Mexican nationals, led to considerable tension between federal officials in Mexico and state officials in California. Internally, in the United States, what were seen as anti-immigrant actions and curtailment of benefits to legal, noncitizen residents have led to increased naturalizations and political organizing among legal residents, Mexican and otherwise.

### **Unintended Consequences**

Unintended consequences of legislation and other actions on immigration are legion. Perhaps the best example of this was the 1965 immigration act, whose

main purpose was to abolish the national-origins quotas and the Asia-Pacific Triangle, but not to radically alter immigration volumes and patterns. The law, in fact, did bring about a fundamental shift in immigration patterns in favor of family unification, led to the dominance of Latin Americans and Asians in U.S. legal immigration, and, because of the generous subsequent response to the post-1965 refugee crisis, resulted in a substantial increase in immigrant numbers.<sup>54</sup>

Termination of the Bracero Program in 1964 stimulated Mexico's border industrialization program and, over time, attracted many people to Mexico's northern border and, presumably, increased the ability to emigrate to the United States. The legalization provisions of IRCA have led to many immigrant applications for family reunification and have complicated dealing with the backlog of legal immigrant cases. Termination of many welfare benefits to legal immigrants stimulated the pace of naturalizations and voter registrations, which altered the outcomes of a number of political contests in 1996 in favor of Democratic candidates and may determine the political alignment of many Mexican Americans in the future. Making undocumented border crossing more difficult could lead many who succeed in making it across to stay put in the United States rather than return to Mexico after they complete seasonal jobs.

## Notes

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1. Wade Graham, "Masters of the Game," *Harper's*, July 1996, pp. 35-50, makes this point quite forcefully. His point is that "illegal immigration is only epiphenomenally a law-enforcement issue; it is at root a labor-market event."

2. An examination of the data on the number immigrants admitted from Mexico and their departure from the U.S. suggests that about 650,000 legal immigrants from Mexico resided in the United States at that time. The 1930 census count of Mexican-origin population seems to have misclassified many Mexican-born as U.S.-born of Mexican origin, and that the total resident immigrant population may have been about one million.

3. The return flow was as high as 600,000 if the peak Mexican- born resident population was one million in 1930; the 1940 U.S. census reported slightly more than 400,000 persons born in Mexico. The net return flow to Mexico during the 1930s was greater than the net immigration to the United States in the 1920s if the census undercount of the Mexican-born in 1940 was not greater than the undercount of the 1920s, in that the Mexican- born population recorded in 1920 exceeded the 1940 count by several tens of thousands.

4. The Chinese Exclusion Act, adopted in 1882 for ten years, extended in 1892 and made permanent in 1902, was interpreted by the Chinese government as a badge of inferiority and created significant bilateral problems in U.S.-Chinese relations. The Act was repealed in 1943 at the express request of the Chinese government at a time when it was a wartime ally. Japanese immigration became controversial in the U.S. at about the turn of the century and in 1908 a “Gentlemen’s Agreement” was negotiated under which the Empire of Japan agreed to not issue passports to those nationals who indicated their intention to migrate to the United States. The United States also adopted legislation making the Japanese ineligible for naturalization. The Gentlemen’s Agreement failed to prevent Japanese immigration. In 1924 Congress extended the exclusion to those nationals ineligible for citizenship—a transparent decision to bar Japanese immigrants, and an action which created far more tension in U.S.-Japanese relations than had been expected.

5. Lawrence Cardoso, *Mexican Emigration to the United States*, 117.

6. Rodolfo de la Garza and Gabriel Szekely, “Policy, Politics and Emigration: Reexamining the Mexican Experience,” in Frank Bean, et. al., *At the Crossroads: Mexico and U.S. Immigration Policy*, (Lanham, MD: Rowman and Littlefield, 1997).

7. Manuel García y Griego, “Hacia una nueva visión del problema de los indocumentados en Estados Unidos” in Manuel García y Griego and Mónica Vereá Campos, *México y Estados Unidos frente a la migración de indocumentados* (México: UNAM-Porrúa, 1988) 123-152.

8. The Bilateral Commission meets once a year to discuss issues at the most senior levels. Seventeen cabinet members from the two countries participated in 1996.

9. Foreign Policy Association, National Opinion Ballot Report 1996. The other most important issue concerns were NAFTA and trade relations 26 percent, drug trafficking 22 percent, and political reform 17 percent.

10. Senado de la República, *Diario de los Debates*, Año I, Período Ordinario, LIII Legislatura, Tomo I, Núm. 28, December 4, 1985, pp. 4-15.

11. Senado de la República, LIV Legislatura, *Audiencia informativa sobre derechos humanos de los trabajadores migratorios mexicanos*, Senado de la República, México, 1991.

12. Carlos Rico, “Migration and U.S.-Mexican Relations 1966-1986” in Christopher Mitchell, *Western Hemisphere Immigration and United States Foreign Policy* (University Park, PA: Pennsylvania State University Press, 1992) 221-283.

13. A review of the Mexican press around 1994-1995 notes that the idea of exploring and establishing a *bracero*-type agreement has gained a wide consensus (amplio grado de consenso), Mónica Vereá Campos, *La Propuesta 187: el debate en México*, CISAN, UNAM, January 22, 1997, p. 90 [Commissioned Paper].

14. In line with this objective, the Instituto Nacional de Migración, the Consejo Nacional de Población (both within the Secretaría de Gobernación), and the Instituto Matías Romero de Estudios Diplomáticos (SRE) organized a seminar on “Las contribuciones de la inmigración

mexicana a la sociedad de Estados Unidos,” which took place on January 24, 1997. Angel Gurría, Secretary of SRE, on the occasion of the Curso de Administración Militar para la Seguridad y Defensa Nacionales, Colegio de la Defensa Nacional, Mexico City, February 7, 1995, referred to the contribution that Mexican workers make to the U.S. economy: He asked that “Estados Unidos reconozca que su mercado continúa demandando la mano de obra mexicana. Debe también reconocer la importante contribución económica que realizan nuestros nacionales...,” “Principios, objetivos y estrategias de la política exterior de México en los años noventa,” *Discursos del Secretario de Relaciones Exteriores, Angel Gurría*, January- February 1995, p. 15.

15. David M. Kennedy, “Can We Still Afford to be a Nation of Immigrants?” *Atlantic Monthly*, vol. 278, no. 5 (November 1996), 51-68.

16. George J. Borjas, “The New Economics of Immigration,” *Atlantic Monthly*, vol. 278, no. 5 (November 1996), 72-80.

17. U.S. Department of Labor, Bureau of International Labor Affairs, *Characteristics and Labor Market Behavior of the Legalized Population Five Years Following Legalization*, May 1996.

18. According to calculations made by the Massachusetts Institute for Social Development, drawing on U.S. Census Bureau data, merchandise exports to Mexico originating in Texas were about \$22 billion in 1995 and those from California around \$7 billion. According to the Texas Comptroller of Public Accounts, as published in “Fiscal Notes” for October 1995, about 80 percent of the value of U.S. exports to Mexico and about 70 percent of imports pass through Texas land ports. Trucks are the dominant mode of transport, carrying 90 percent of the value of U.S. exports to Mexico and 83 percent of the value of imports.

19. The Gallup 1993 proportion favoring a decrease in immigration (65 percent) conforms with the percentage in a *New York Times*-CBS poll in June 1993. See study by Thomas J. Espenshade and Katherine Hempstead, “Contemporary American Attitudes Toward U.S. Immigration,” *International Migration Review*, vol. 30 (Summer 1996), p. 546. The 1995 Gallup Poll figure comes from Espenshade and Maryann Belanger, “U.S. Public Perceptions and Reactions to Mexican Migration,” in Frank Bean and others, *At the Crossroads: Mexico and U.S. Immigration Policy* (Lanham, MD: Rowman & Littlefield, 1997).

20. The poll results were released by *La Opinion* on May 21, 1996. The sample was 500 of which 14 percent said in strict confidentiality that they were undocumented aliens, 29 percent U.S. citizens, and 55 percent legal residents.

21. Opinion poll reported by *Este País*, no. 70, January 1997, p. 33. The full executive report of the survey notes that 75 percent of respondents believe that U.S. electoral politics had some influence on the way *indocumentados* are received and treated by Americans. The poll also finds that 80 percent of the respondents consider that the United States has the right to stop the entry of *indocumentados*. Alduncin y Asociados, “Migración y trato a *indocumentados*,” *El Universal/Alduncin y Asociados*, 12-16 April, 1996, mimeo.

22. The Mexican survey was carried out in August 1996, by *Reforma* and *El Norte* and consisted of 1500 interviews in the country. The U.S. survey also was carried out in August 1996, by the *Los Angeles Times* and consisted of 1572 interviews with national representation. *Reforma*, September 13, 1996, 6A.

23. Opinion poll by MORI de Mexico, January 1997. Sample size 1150 persons; with national representation.

24. CONAPO, ENCOPLAF 96. The survey size was 3,711 individuals in nine states in Central and Southern Mexico, and was taken in November-December, 1996.

25. Peter Skerry, *Mexican Americans: The Ambivalent Minority* (New York: The Free Press, 1993), 312.

26. Rodolfo O. de la Garza and Louis De Sipio, eds., *Ethnic Ironies: Latino Politics in the 1992 Elections* (Boulder, CO: Westview Press, 1996), 5.

27. Espenshade and Hempstead, "Contemporary American Attitudes Toward U.S. Immigration," pp. 547 and 555.

28. Perhaps the best example was in Orange County, California, where the Mexican-American population showed its power in the defeat of Robert Dornan by a Latina newcomer to politics, Loretta Sanchez. On broader statewide levels, a number of surveys concluded that the Latino vote in California rose from 10 percent of the total in 1992 to between 11 and 13 percent in 1996, from 10 to 16 percent in Florida, and 11 to 12 percent in Texas. See *Washington Post*, November 24, 1996, p. A12.

29. This is the theme of an op-ed column by Paul Gigot, a conservative, Republican-leaning columnist and television commentator, in the *Wall Street Journal*, November 22, 1996, p. A14. One sentence that exemplified the main point of the column is the following: "If Republicans want a reason to worry, they can anticipate the fast-growing Hispanic population voting Democratic the way blacks do now, by more than 80%." William J. Bennett and Jack Kemp made the same point in an earlier op-ed column in the *Wall Street Journal* of October 21, 1994: "The anti-immigration boomerang, if it is hurled, will come back to hurt the GOP."

30. Focus group of entrepreneurs. Alduncin y Asociados, Mexico, D.F., November 12, 1996.

31. This analysis is based on notes and commentary articles published mostly in the second half of 1994 in Mexican newspapers of wide national circulation (See Commissioned Paper: "La Propuesta 187: Debate En Mexico" by Mónica Vereá Campos).

32. U.S. press clippings published from October 1995 to April 1996.

33. In their quarrel on this issue, Governor Pete Wilson and Senator Phil Gramm used constitutional arguments. Wilson said his position was justified by the 10th amendment's guarantee of states' rights and Gramm replied that the governor should read further to the 14th amendment which prohibits the denial of equal access to education for any child.

34. Focus Group of NGOs. Alduncin y Asociados, Mexico D.F., November 7, 1996

35. Comisión Nacional de Derechos Humanos, *Segundo informe sobre las violaciones a los derechos humanos de los trabajadores migratorios mexicanos en su tránsito hacia la frontera norte, al cruzarla y al internarse en la franja fronteriza sur norteamericana*, México, 1996. The First Report was published in 1991.

36. Comisión Nacional de Derechos Humanos, *Informe sobre violaciones a los derechos humanos de los inmigrantes. Frontera Sur*, México, 1995.

37. The annual per-country limit for preference visas is 7 percent of the annual total. This annual total of visas available for all preference categories is based on usage during the preceding year, and within a minimum of 366,000. In 1995 the annual total was 400,224, and no more than 28,016 visas could be issued to persons born in any independent country. This number does not include (1) immediate relatives of U.S. citizens (22,016 admitted

from Mexico in FY 95) and (2) 2A preference admissions exempt from the per-country limit (approximately 39,000 from Mexico in FY 95).

38. Section 287 (a)(1) of the INA, 8 U.S.C. sec. 1357 (a)(1) authorizes any officer or employee of the INS without a warrant, “to interrogate any alien or person believed to be an alien as to his right to remain in the United States.” Section 287(a)(3) of the Act, 8 U.S.C. sec 1357 (a)(3) authorizes agents, without a warrant “within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle.”

39. South Texas Law Journal 26,2 (Summer 1985): 347-356.

40. Unlike criminal proceedings, deportation hearings may proceed in the respondent’s absence, and the INS is required only to prove its case using “clear, unequivocal and convincing evidence” rather than satisfying the “beyond a reasonable doubt” standard.

41. 494 U.S. 259, 272 (1990).

42. Id. at 265-266

43. Southern California Law Review 65 (1992), 1008.

44. *Washington Post*, November 23, 1996, p. A4, under the headline: “Republicans Steadfast on Welfare Overhaul.”

45. Letter of July 3, 1996, to Senators Gramm and Hutchison, in response to a letter from them to Senator Orrin Hatch, chairman of the Senate Judiciary Committee, dated July 2.

46. *Miami Herald*, April 11, 1995, p. 7A.

47. Instituto Nacional de Migración, Secretaría de Gobernación, “Presentación,” *Asuntos migratorios en México. Opiniones de la sociedad 1995*, México D.F., 1996

48. The motives behind such proposals varied. One of them was to prevent disorderly movements along the Mexico-U.S. border. See Jorge Bustamante, “Hacia una propuesta sobre emigrantes indocumentados,” *Uno más uno*, January 30, 1978.

49. Francisco Alba, “La emigración mexicana a Estados Unidos y la iniciativa del Tratado de Libre Comercio en América del Norte: el juego de las expectativas” in Gustavo Vega Cánovas (coord.), *Liberación económica y libre comercio en América del Norte* (El Colegio de México, 1993) 273-289.

50. INS; and “Immigrant Policy News -The State-Local Report,” March 1996.

51. These issues are discussed in Roberto Suro, *Remembering the American Dream: Hispanic Immigration and National Policy* (New York: Twentieth Century Fund Press, 1994), 103-105.

52. *Distant Neighbors* (New York: Knopf, 1985).

53. A convincing case can be made that Mexico’s import-substitution policy did not limit imports, but rather changed the composition of imports from consumer goods to intermediate products and capital equipment.

54. David M. Reimers, “An Unintended Reform: The 1965 Immigration Act and Third World Immigration to the United States,” *Journal of American Ethnic History*, Fall 1983.

