

RESPONSES TO MIGRATION

IRCA and the Facilitation of U.S.-Mexico Migration Dialogue

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Context

The Immigration Reform and Control Act (IRCA) was enacted in 1986 after an extended period of study and national debate in the United States on the controllability of the border. The Carter administration had proposed comprehensive immigration legislation in 1977, but the Congress showed no disposition to act. Instead, the Select Commission on Immigration and Refugee Policy (SCIRP) was established in 1978, which made its report in early 1981. By then, Ronald Reagan was president and his administration submitted its own legislation, drawing on the Carter proposals and the SCIRP report. There was still considerable reluctance to act.

The members of SCIRP addressed some highly conflictual issues that later became central to the IRCA debate. These dealt with amnesty for persons illegally resident in the United States and a penalty provision for employers who knowingly hired persons illegally in the United States. SCIRP recommended an employer-penalty program, but then voted narrowly (eight to seven, with one abstention) in favor of some form of more secure identification document or documents to

determine the right of persons to be present and work in the United States. The subsequent legislation submitted by the Reagan administration did include an employer-penalty program, but this did not include the adoption of a means of identification that would be difficult to forge. The amnesty provision in the Reagan submission had a January 1, 1980 date for continuous residence of persons illegally in the United States, plus some additional criteria, for eligibility for receiving temporary resident status. The Reagan legislation also proposed a modest temporary worker program.

In the year following this proposal, in August 1982, the Mexican debt crisis erupted and this led to four years of economic decline and stagnation in Mexico. During those four years, the real minimum wage in Mexico declined by some 40 percent as a consequence of the stabilization program in the country. It is hard to precisely determine cause (the Mexican economic decline and reduction in real incomes of Mexican workers) and effect (the impact on Mexican emigration to the United States), but apprehensions did increase from about 900,000 to one million in the years immediately preceding 1982 to 1.2 to 1.3 million a year between 1983 and 1985. Apprehensions soared to 1.7 million in 1986, and then dropped again in the years after IRCA. Whatever reality these apprehensions signified—more border-crossing attempts, more attention to apprehensions by the U.S. Border Patrol, or both—they did revive the issue of loss of control over immigration by the U.S. authorities.

Triggering Events

The SCIRP report, followed by the legislative submission of 1981, laid much substantive groundwork for the discussion that followed on the content of legislation dealing with illegal immigration. The triggering events for IRCA included the economic slowdown in the early years of the Reagan administration prompted by the anti-inflation effort of the Federal Reserve, and the concern raised by the extended economic troubles of Mexico after 1982. The triggering events in this case occurred in the two countries and it was significant that they came after considerable debate within the United States on possible remedial action to curtail illegal immigration. IRCA dealt only with this subject, not with immigration generally.

Debate and Compromise

The grand bargain in IRCA was the adoption of an employer-penalty program advocated by those who wished to curtail future illegal immigration, and the legalization provisions supported by groups who wished to regularize the situation of persons who, while not legally in the United States, had

established their roots there over an extended period. The debate on both parts of the bargain was fierce.

Regularization was seen by its opponents as rewarding lawlessness and inviting more of the same in the future. Penalizing employers for knowingly hiring persons illegally in the United States was seen by its opponents as requiring a form of documentation of Americans that would inevitably lead to human rights violations and discrimination in hiring against Latinos and Latino-looking persons.

The compromises in IRCA around this grand bargain were significant. Employer identification of those persons with a right to work in the United States was based on existing and easily forged documents, like a social security card and driver's permit. As was widely predicted at the time, a thriving business emerged in producing these forged documents. In addition, the INS was less than zealous in implementing the program. The experiment has not been a rousing success in deterring illegal immigration. The outcome might have been the same even if identification of persons had been made more secure and if penalties had been more severe, but this is speculation. The legalization program turned out to be quite substantial. Legalization applications exceeded three million, overwhelmingly of Mexicans (70 percent Mexican of the pre-1982 applicants and 81 percent Mexican under the Special Agricultural Workers program). Around 2.7 million people were actually legalized under the program.

The SAWs program, under which applicants had to demonstrate only three months of qualifying work in the United States during the previous year, was a special concession extracted by agricultural interests. Roughly 1.3 million of the legalization applications came under this program. The pre-1982 program, which based legalization on continuous residence from no later than January 1, 1982, had 1.7 million applicants.

Mexican Reaction

The Mexican authorities reacted to IRCA's passage much as they had to previous U.S. legislative and other U.S. responses to migration matters. They remained largely silent, treating the legislation as an internal matter of the United States about which it would be inappropriate to comment. As described in Volume 1, pages 437 to 509, Mexico for many years consciously adopted a "no-policy" policy toward U.S. migration actions, deliberately refraining from commenting or reacting, other than to protect the human rights of its nationals in the United States.

One other provision of IRCA turned out to have significant consequences in bringing some alteration of this policy, namely, that establishing the Commission for the Study of International Migration and Cooperative Economic Development (often referred to as the Asencio Commission, after its chairman, Diego Asencio). This

Commission was instructed, “in consultation with the governments of Mexico and other sending countries in the Western Hemisphere,” to examine the conditions which contribute to unauthorized migration to the United States and to explore “mutually beneficial reciprocal trade and investment programs to alleviate such conditions.” The final report of the Commission, *Unauthorized Migration: An Economic Development Response*, was issued in July 1990 and, among other proposals, recommended the establishment of a free-trade area between Mexico and the United States. This was not the only such recommendation, but it was the main one developed with a migration as contrasted with a primarily economic motivation.

The Commission and its staff engaged in an extensive consultation and research program with Mexico and other important migrant-sending countries in the Western Hemisphere. In Mexico, it obtained the collaboration of the Consejo Nacional de Población (CONAPO), the Mexican government’s demographic agency, and many universities throughout the country. This cooperation facilitated submissions from Mexican researchers. At the end of the day, in addition to including the research products in appendices to the final Commission report, six volumes, many dealing with the Mexican-U.S. situation, were published commercially by Westview Press in 1991 under the overall title of “Series on Development and International Migration in Mexico, Central America, and the Caribbean Basin.”

For a number of reasons, the Commission was able to open a dialogue on migration issues with Mexico that had not been possible before. Some explanations for this accomplishment are that the context was not threatening, but rather developmental in nature; the Commission was a creation of the U.S. Congress, not the executive branch; the interaction was based on joint and parallel studies by Mexicans and Americans; and IRCA itself had established a new reality in U.S. policy toward unauthorized migration. In addition to its discussions with academics, the Commission’s consultations included meetings with senior officials of the Secretaría de Relaciones Exteriores (the Mexican Foreign Ministry), Gobernación (the Interior or Government ministry, to which CONAPO reported), the Mexican Senate, and individual members of the Chamber of Deputies, Mexico’s lower house. CONAPO had been designated as the main point of liaison for the Commission’s research by President Miguel de la Madrid.

New Context

The failure to resolve the identification problem in connection with employer sanctions in IRCA has meant that this issue returned to the table in the 1996 immigration legislation. The main innovation on this issue in the 1996 legislation is the establishment of voluntary pilot programs to verify employment eligibility. The basic program (there are two others) requires new employees to provide their

prospective employers with their social security numbers and, in the case of non-U.S. citizens, their INS identifying information. The employers have three days before hiring to verify the work eligibility of the new employee using a toll-free, electronic confirmation system under which the two numbers will be cross-checked. The pilot programs are voluntary for employers to join, have a duration of four years, and are to be conducted in at least five of the seven states with the largest populations of undocumented immigrants. As is evident from the description, the new pilot programs themselves represent a compromise. They are voluntary and have a time-limited test life.

The legalization program set in motion an inevitable second step for family reunification that will affect legal immigration numbers for 15 to 20 years, or more. The backlogs that will develop are substantial, ranging up to one million and more in FY 1995, and their future progression and reduction will depend on behavior of the legalized residents, particularly the number that naturalize and the nature of their families, and the speed with which visas are issued in the future.

IRCA in retrospect, has had three major consequences: (1) it led to the legalization of status of 2.7 million people, mostly of Mexican origin; (2) it helped open a migration dialogue between Mexico and the United States, but (3) it changed the content of the dialogue as a result of the many family unification visa applications that were made in its wake.

The Never-ending Reform Process

It took ten years between the grand bargain of IRCA to the significant new bargains on illegal immigration in the 1996 legislation. It is evident that the 1996 legislation, because of its own compromises, coupled with the dynamic situation in the U.S.-Mexican relationship, will require revisiting in the relatively near future.

IRCA and the Asencio Commission helped set in play a consultative process between Mexico and the United States that had not existed earlier. The active engagement of the two countries was abetted by the entry into effect of NAFTA on January 1, 1994, and this affected engagement on migration issues as well. One end result of this combination—the contacts made possible by the Asencio Commission and the institutional development under NAFTA—are the proximate parents of the bilateral migration examination of which this case study is a part.

