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UNITED STATES IMMIGRATION POLICY TOWARD MEXICO: AN HISTORICAL PERSPECTIVE

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Since the turn of the century agricultural growers and industrialists have been importing or otherwise encouraging Mexican nationals to migrate to the United States on an organized basis. In 1918, for example, the Department of Labor and the Immigration and Naturalization Service (hereinafter referred to as INS) authorized the importation of 30,000 Mexican nationals to work in agriculture, railroads and other defense-related employment as part of the war effort.¹ Since then, the Department of Labor, the Department of Agriculture and the State Department, operating under various mandates and in conjunction with organized American interest groups, have invoked departmental policies and practices that have effectuated specific migration patterns of Mexican nationals and Mexican labor on both sides of the border. These migration patterns have taken various forms—be they legal immigration, *bracero*, commuter or illegal—and are sufficiently interrelated to be considered as part of an overall United States immigration policy toward Mexico.

This article will examine this policy in three parts. The first part will examine the period roughly before 1930. The second is divided into two periods: (1) the depression of the 1930's; and (2) the period of the *bracero* program. The third part covers the post-*bracero* period. In conclusion, the so-called illegal alien problem is analyzed in light of the historical antecedents discussed in this article.

I. HISTORICAL ANTECEDENTS BEFORE 1930 TO PRESENT IMMIGRATION POLICY

A. *Legislative Control Efforts*

Prior to 1882 there were no restrictions or quota laws. Although the United States was selective in its recruitment and re-

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1. ANN. REP. OF COMM'R GEN. OF IMMIGRATION FOR THE FISCAL YEAR 1918, at 15-16.

portedly considered non-English speaking settlers from Europe as "unassimilable," the federal government was generally indifferent to immigration.² Each state initially maintained control over immigration; later, particularly in the Midwest and West, states were eager to attract settlers and encouraged immigration.³

Though challenged, the power of states to regulate immigration was upheld in 1837 by the United States Supreme Court.⁴ In 1875, the Supreme Court held that the state head tax laws of New York, Louisiana and California were unconstitutional and in violation of the Commerce Clause of the Constitution.⁵ The right of the federal government to control the admission of immigrants was justified by the Supreme Court on the basis of the principle of sovereign rights and the welfare and protection of the nation.⁶

In 1882, the first general immigration law was enacted;⁷ it established a head tax and provided for the exclusion of certain classes of people and other persons likely to become public charges. Three years later Congress passed the first alien contract labor law.⁸ The primary aim of the legislation was to end and prevent the practice of employers of importing "cheap" foreign labor. The Act of March 3, 1891, prohibited the importation of alien laborers by the use of advertisements circulated in foreign countries which promised employment.⁹

The passage of a Congressional bill in 1893,¹⁰ established a board of special inquiry to pass on the admissibility of arriving immigrants, marking the beginning of a more restrictive immigration policy. In 1917, Congress enacted a literacy test¹¹ with a greater restrictive effect, overriding the veto of President Wilson. Presidents Cleveland, Taft and Wilson also vetoed similar legislation. This Act provided for the exclusion of all aliens over sixteen years of age who were physically able to read but did not read

2. C. Wittle, *Immigration Policy Prior to World War I*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (1949) (hereinafter referred to as *Wittle*); F. CAVANAUGH, IMMIGRATION RESTRICTION AT WORK TODAY: A STUDY OF THE ADMINISTRATION OF IMMIGRATION RESTRICTION BY THE UNITED STATES (1928).

3. *Wittle*, note 2 *supra*.

4. *New York v. Miln*, 36 U.S. (11 Pet.) 102 (1837).

5. *Henderson v. Mayor of New York City*, 92 U.S. 259 (1875).

6. *Chy Lung v. Freeman*, 92 U.S. 275 (1875). Passage of the Alien Act of 1789, 1 Stat. 570, constituted the first Congressional attempt to legislate immigration policy. The Act enabled the President to order the departure from the United States of any alien he deemed dangerous. It expired after two years due to its unpopularity and was not later invoked as a precedent for federal authority over state legislative authority in immigration.

7. The Act of August 3, 1882, 22 Stat. 214.

8. Act of February 26, 1885, 23 Stat. 332 (This Act is popularly referred to as the Alien Contract Labor Law). In 1887, another act of similar import was passed: Act of Feb. 23, 1887, 24 Stat. 414.

9. 26 Stat. 1084.

10. Act of March 3, 1893, 27 Stat. 569.

11. Act of Feb. 5, 1917, 39 Stat. 874.

English or some other language or dialect. In addition, the Act provided for the establishment of an Asiatic zone barring inhabitants of India, the islands surrounding Asia, and territory not already covered by the Chinese Exclusion Act.¹²

In 1918, the provisions of the recently enacted immigration laws relating to the head tax, contract labor and literacy requirements were waived for Mexican laborers by the Commissioner General of Immigration with the approval of the Secretary of Labor.¹³ This established two important precedents: first, the practice was initiated whereby immigration laws were relaxed when it became desirable to import Mexican workers; second, their restrictive provisions were invoked when it was deemed necessary to exclude Mexicans from immigrating on a permanent basis.

The Departmental Order of 1918¹⁴ represented the first successful attempt by growers and other industrialists to gain governmental approval permitting the importation of Mexican labor. What was initiated as a temporary and cooperative effort to fulfill the shortage of labor through the duration of the war became an extended and cooperative effort to tap Mexican labor. In many respects, the Departmental Order of 1918 represents the first major inducement, initiated by the United States government, leading to the northwest movement of Mexican nationals seeking to better their socioeconomic situation. In terms of United States immigration policy toward Mexico, this governmental action should be regarded by students of immigration as the first Bracero Program.¹⁵

In the period from 1900 to 1910 Mexican immigration increased moderately. Approximately 48,900 Mexican immigrants were admitted into the United States (see Appendix 1). The increased demand for cheap Mexican labor during the period from 1910 to 1918 corresponded to the application and enforcement of the Chinese Exclusion Laws¹⁶ and the Gentlemen's Agree-

12. Act of May 6, 1882, 22 Stat. 58.

13. Under § 4, Proviso 9 of the Act of Feb. 5, 1917, 39 Stat. 878, the Commissioner General of Immigration, with the approval of the Secretary of Labor, authorized the admittance of temporary foreign workers. The so-called "Ninth Proviso" became the legal basis for subsequent temporary worker importation schemes involving Mexican nationals.

14. Departmental Order No. 52461/202. See U.S. IMMIGRATION SER. BULL., Vol. I, No. 3, at 1-4 (1918).

15. "Bracero" is a term commonly used to refer to Mexican nationals who work in the United States. Literally translated, "bracero" means one who works with his arms. The nearest English equivalent is "field hand". Since 1942 when the United States again began importing Mexican workers, the term "bracero" was used to refer to both the Emergency Farm Labor Program and the post-World War II temporary worker programs, which together lasted from 1942 to 1964.

16. The Act of May 6, 1882, 22 Stat. 58. This Act excluded Chinese from

ment.¹⁷ Together with the continual rural to urban movement within the United States, the demand for cheap labor was greater than the supply. During the 1910's approximately 173,600 Mexicans were admitted into the United States (see Appendix 1). Thus, the number of Mexican immigrants admitted in the 1910's increased 3.5 times over the previous decade.

European and Asiatic immigration decreased as a result of the restrictions established by the Exclusion Law of 1921¹⁸ and Quota Act of 1924.¹⁹ In effect, these laws marked the termination of large scale immigration from Europe.²⁰ It was not until Asian and European immigration was effectively curtailed that Mexican immigration received attention in Congress.

The 1924 legislation established a quota system which numerically restricted immigration on the basis of a national origins formula. However, Western Hemisphere countries, including Mexico, were exempted from the quota restrictions. Proponents of this exemption comprised a formidable group: capitalists argued that Mexico was a source of cheap, abundant labor and thus an economic asset to the country; the Department of Agriculture asserted that Mexican labor was needed for reclamation projects; and the State Department contended that the application of the quota to the Western Hemisphere would adversely affect the efforts of Pan-Americanism. In opposition was organized labor which maintained that Mexicans displaced Americans in the labor market because of their alleged willingness to work for lower wages. Moreover, they argued that in so doing, possibilities for labor organization were thus thwarted.

Racists argued that Mexicans posed racial threats to the homogeneity of the American people because of their biologically inferior status. Congressman Box best summarized these sentiments by stating:

[T]he Mexican peon is a mixture of Mediterranean-blooded Spanish peasants with low-grade Indians who did not fight

entering the United States for a period of ten years and prohibited their naturalization. The part of the Act of 1882 pertaining to Chinese exclusion was strengthened by subsequent enactments in 1884 and 1888. 23 Stat. 332, and 25 Stat. 566 respectively. These laws were re-enacted in 1892 and 1902. 27 Stat. 25, and 32 Stat. 176 respectively. In 1904, Congress re-enacted the Chinese exclusion laws without any further limitation in time. 33 Stat. 428. This statute was not repealed until 1943. 57 Stat. 600.

17. "Gentleman's Agreement" is the name given to a treaty signed in 1907 between the United States and Japan. By this agreement Japan agreed to stop issuing passports to its laborers. 1 Foreign Rel. U.S. 766, pt. 2 (1907).

18. Act of May 19, 1921, 42 Stat. 5.

19. Act of May 26, 1924, 43 Stat. 153.

20. Since 1821 approximately 30 million European immigrants have been legally admitted into the United States (1821-1920). Subsequent to the passage of the aforementioned Acts, there was a noticeable decline in European immigration which has continued up to the present. ANN. REP., IMMIGRATION AND NATURALIZATION SERVICE, at 53-55 (1973).

to extinction but submitted and multiplied as serfs. Into this was fused much negro slave blood. This blend of low grade Spaniard, peonized Indian and negro slave mixes with negroes, mullatoes and other mongrels, and some sorry whites, already here. The prevention of such mongrelization and degradation it causes is one of the purposes of our laws which the admission of these people will tend to defeat.²¹

Throughout the 1920's the proportion of Mexican immigrants continued to increase. Approximately 487,700 Mexican immigrants were admitted into the United States in the period from 1920 to 1929. While the 1920's was the decade in which the greatest number of Mexican immigrants were admitted, the year 1924 represents the highest number of Mexican immigrants for any one year (see Appendix 1).

B. *Reports on Mexican Labor*

In 1901 the Industrial Commission reported that "the Mexican peon laborer was little if any better than the Japanese coolie" and that "the competition of the Mexican was quite as disastrous to white labor as was that of the Chinese and Japanese."²² In 1908 Victor S. Clark completed what may have been the first comprehensive government-sponsored study on Mexican labor and Mexican immigration ever published.²³ Clark compared the Mexican laborer with the Black in the South and concluded that they did not occupy analogous social positions because "Mexicans were not permanent, did not acquire land or did not establish themselves in little cabin homesteads, but remained nomadic and outside of American civilization."²⁴

Clark highlighted many of the concerns of racists regarding Mexican laborers, yet attempted to dispel their fears: "The American population of these western towns and cities is growing so rapidly, and the country is filling up so fast with European immigrants, that the *so-called 'Mexican' population, while really growing, may by contrast appear to be lessening*; also the New Mexicans are more widely distributed than formerly, entering new occupations and old occupations in a country that was entirely without settlers a few years ago. Therefore, a local decrease might accompany a general increase throughout the state, or in neighboring states."²⁵

21. 69 CONG. REC. 2817-18 (1928).

22. REPORT OF THE INDUSTRIAL COMMISSION ON IMMIGRATION, Vol. XV, at 759 (1901).

23. U.S. DEP'T OF LABOR, MEXICAN LABOR IN THE UNITED STATES, Bull. No. 78, at 466-522 (1908).

24. *Id.* at 483.

25. *Id.* at 507.

The final report of the United States Immigration Commission of 1911 reported that Mexicans were unskilled, that they occupied the lowest occupational positions, that they lacked competitive ability, and that Mexicans were naturally migratory. The Commission concluded that "it was evident that in the case of the Mexican he was less desirable as a citizen than as a laborer," and recommended the continued usage of Mexican workers.²⁶ The report itself concluded that the West was in need of a larger population to settle the land, exploit its resources, and to provide a supply of labor for the maintenance and expansion of its industries. However, the Dillingham Commission in its recommendations made clear that Mexicans were only suitable for supplying labor and were not desirable as settlers.²⁷

In 1925 the House Immigration Committee published a report by Robert Foerster pointing out that more than 90% of the Latin population was of Indian blood and that these people were racially inferior to white stock.²⁸ Harry Laughlin, biological expert to the House Committee from 1921 to 1924, testified on the racial qualities of Mexicans and recommended that Western Hemisphere immigration be restricted to whites.²⁹

Restrictionists and racists continued to argue that the "Mexican race" posed a threat to the "White race," that there was no labor shortage and that the importation of Mexican laborers would adversely affect wages and displace white laborers. In addition, restrictionists expressed concern that Mexican laborers would flee from the agricultural fields to the cities. As they had since the inception of efforts to control immigration, United States officials viewed the policy as a question of labor demand. During the first importation program, Department of Labor officials made careful efforts to prove to Congressional leaders and other critics that their fears were without foundation and recommended the con-

26. IMMIGRATION COMM'N REP., ABSTRACTS OF REPORTS OF THE IMMIGRATION COMMISSION, Vol. I, S. DOC. No. 747, 61st Cong., 3d Sess., at 682-691 (1911). The Act of February 20, 1907, 34 Stat. 897, created and defined the duties of the Immigration Commission. This special Commission has been popularly referred to as the Dillingham Commission after Senator William P. Dillingham, Chairman of the Commission.

27. One can hardly minimize the significance of the Dillingham Commission. It not only became the basis of subsequent immigration legislation (Act of 1917, 39 Stat. 874; Quota Laws of 1921, 42 Stat. 5; and 1924, 43 Stat. 153), but according to David North, the Commission's 42 volume report, "was said to have been the most comprehensive socio-economic research effort ever mounted by the government up to that time (except for the census)." See U.S. DEP'T OF LABOR, IMMIGRANTS AND THE AMERICAN LABOR MARKET, MANPOWER RESEARCH MONOGRAPH No. 31, at 13 (1974).

28. U.S. DEP'T OF LABOR, THE RACIAL PROBLEMS INVOLVED IN IMMIGRATION FROM LATIN AMERICA AND THE WEST INDIES TO THE UNITED STATES (1925).

29. HOUSE IMMIGRATION COMM., 17TH CONG., 1ST SESS., IMMIGRATION FROM COUNTRIES OF THE WESTERN HEMISPHERE (1928).

tinued importation and use of Mexican laborers.³⁰

The concerns stated in these documents reflect the dominant attitudes toward Mexicans during this period. The numerous public hearings, government reports and official publications and literature pertaining to the subject of Mexican immigration were replete with racist arguments and conclusions regarding all persons of Mexican origin, native-born citizens and immigrant aliens alike.³¹

Even as late as 1927, government social science experts expressed concern about immigration from Mexico and the possibility of numerical domination eventually leading to political secession:

The graphic record that these maps provide of these Mexican and Canadian invasions calls attention to a statement made earlier in this monograph, namely, that these two ethnic groups derive their significance, not so much from their absolute numbers as from *their concentration and almost continuous contact with their parent populations*. There are regions along the Mexican and New England borders of this country where there are practically no foreign born excepting Mexicans and French Canadians and where the population is in direct communication racially and culturally with Mexico or French Canada. Putting the matter another way, it is not impossible that, if these two over-the-border movements should continue for another decade on the same scale as in the one just closed, plebiscites of the sort which have been held in Upper Silesia and Transylvania would result in the transfer of a considerable portion of the territory of the United States to Mexico and Canada.³²

Racists and their supporters continued to actively oppose the importation and employment of Mexican workers in the United States. This active and open opposition eventually subsided following the depression of the 1930's. It would be an inaccurate implication, however, to state that racist policies toward Mexicans ceased.³³

30. In 1920 Grant Hamilton and A.L. Faulkner conducted a special investigation of the impact of the Departmental Order of February 12, 1920, and the supplementary Order of April 12, 1920, admitting temporary Mexican laborers for employment in agricultural pursuits. See U.S. DEPT OF LABOR, REPORT OF SPECIAL COMMITTEE APPOINTED BY THE SECRETARY OF LABOR TO INVESTIGATE COMPLAINTS AGAINST THE TEMPORARY ADMISSION OF ALIENS FOR AGRICULTURAL PURPOSES (1920).

31. See e.g., S.J. Res. 66, 66th Cong., 2d Sess. (1920); H.R.J. Res. 271, 66th Cong., 2d Sess. (1920); H.R. 8523, H.R. 8530, H.R. 8702, 71st Cong., 2d Sess. (1930); H.R. 12382, 71st Cong., 2d Sess. (1930).

32. U.S. DEPT OF COMMERCE, IMMIGRANTS AND THEIR CHILDREN: A STUDY BASED ON CENSUS STATISTICS RELATIVE TO THE FOREIGN BORN AND THE NATIVE WHITE OF FOREIGN OR MIXED PARENTAGE, at 128-29 (1927).

33. Part II of this article will analyze some of these policies, *infra*.

C. *The Beginning of Labor Contracting and Recruiting*

During the early part of this century two very important labor institutions emerged, the labor contractor and the private recruiting agent. Previously, the recruitment of labor had been largely a matter of fulfilling individual demands rather than fulfilling the needs of large scale agricultural industries. The appearance of the labor contractor and private recruiting agent soon became the predominant mode of labor market organization. Their role and function was a direct outgrowth of employer labor recruitment efforts. The use of these middlemen became particularly important between 1900 and 1910 as a result of threatened conflict caused by increased stridency, enforcement of federal immigration laws and demands by employers for cheap Mexican labor. The Interstate Migration Hearings observed that:

In the capacity of contractor, he might also carry on large-scale operations; and as the national immigration laws tightened, his activities became less and less scrupulous. Operating alone or as a representative of a so-called private employment agency, he charged exorbitant fees to both worker and employer. He advertised extensively, baiting his prey with ill kept promises. He herded the Mexicans in groups, sending them on long journeys across the state, without system or plan. Whites and Negroes he treated similarly, with the difference that Negroes were less inclined than either White or Mexican labor to roam far afield in search of work.³⁴

The labor agent, as an intermediary between the employer and worker, provided the link between the forces within Mexico causing emigration to the United States and the forces within the United States causing immigration from Mexico.

II. THE RISE AND FALL OF RESTRICTIONIST POLICIES

A. *The Act of 1929*

The Act of 1929 made it a felony for an alien to enter the country illegally, and further provided for a more severe punishment for one who returns after having been deported.³⁵ However, stringent measures to stem illegal immigration were already in existence prior to the passage of this legislation. For example, in 1924 the Border Patrol was created and thereafter expanded both in personnel and appropriations earmarked for deportation work.³⁶ As a result, 15,434 Mexicans were deported in the years

34. *Interstate Migration Hearings Before the House Comm. on the Judiciary*, 76th Cong., 3d Sess., pt. 5, at 1804 (1941).

35. 45 Stat. 1551.

36. Act of May 28, 1924, 43 Stat. 240, as amended by the Act of February 27, 1925, 43 Stat. 1049.

1925-1929 as compared to the 5,096 in the years 1920 to 1924.³⁷ Convinced of the effectiveness of the Border Patrol, James Batten wrote in 1930: "Another new feature, not in the law itself, but in its enforcement through the Border Patrol, has practically reduced illegal entries to the vanishing point."³⁸ By establishing a reign of terror over Mexicans already in the United States, either by intent or by accident, the Border Patrol proved its effectiveness. Reports during this period suggest that thousands of Mexicans in the United States fled to the border and sought permission to cross in fear of arrest.³⁹ According to Robert N. McLean, "it was the policy of the immigration service to permit and even encourage these voluntary departures."⁴⁰

Meanwhile, the State Department and its subdivision, the United States Consular Service, successfully frustrated the movement to place Mexico under the quota system by ordering stringent enforcement of existing immigration laws.⁴¹ By enforcing the provisions of the head tax, the literacy test, the Contract Labor Law, and the prohibition against immigrants likely to become public charges of the 1917 Act, the State Department sharply curtailed the number of visas issued to Mexicans. Thus, while Mexican immigration into the United States decreased, Mexican emigration and repatriation from the United States increased at unprecedented rates. According to a recent report, "nearly 89,000 Mexican aliens departed in the 1930's while 27,900 immigrated on permanent visas."⁴²

Thus, no additional legislation as represented by the Act of 1929⁴³ was needed to counteract Mexican immigration. One commentator noted:

Through the cooperation of the Department of State and the Department of Labor we have passed in practically one year from a wide open Mexican border to a practically closed Mexican border. This has been accomplished, not by the enactment of any new restrictive legislation, not so much by

37. L. GREBLER, *MEXICAN IMMIGRATION TO THE UNITED STATES: THE RECORD AND ITS IMPLICATIONS*, MEXICAN STUDY PROJECT-ADVANCEMENT REPORT 2, at 28 (1966).

38. J. Batten, *New Features of Mexican Immigration*, NATIONAL CONFERENCE OF SOCIAL WORK, at 487 (1930) (Proceedings of 57th Annual Meeting).

39. R. McLean, *Tightening the Mexican Border*, 64 SURVEY 29 (1930).

40. *Id.*

41. 72 CONG. REC. 7111 (1930).

42. Grebler, *supra* note 37, at 27-29. This seemingly voluntary exodus subsided in the latter phase of the depression, but the entire decade was characterized by net out migration—probably the only extended period of such migration in the history of movements across the Mexican border. Nearly 89,000 Mexican aliens departed in the 1930s while 27,900 immigrated on permanent visas. The magnitude of the exodus is illustrated by the decline in the Mexican born population in the United States from 639,000 persons in 1930, to a little over 377,000 in 1940.

43. See text accompanying note 37 *supra*.

new features even, as by the strict enforcement of existing laws. But this in itself is an outstanding new feature in Mexican immigration. This remarkable result has been accomplished with so little publicity that the average citizen is unaware of it.⁴⁴

Forced repatriation and "voluntary" departures in many respects reflected more of an exodus from a hostile society than a mere reaction to the economic conditions of the times. The repatriation and voluntary departures reinforced the finding of the 1911 Report⁴⁵ that Mexicans were less desirable as citizens than as laborers and tolerable as laborers only to the extent that they were not a competitive group.

B. *Relaxation of Restrictionist Policies: A New Need for Mexican Labor*

The importation of Mexican labor again became desirable with the return of prosperity and the corresponding demands for an increased labor force as caused by United States preparation and mobilization for war. However, despite renewed interest in employing Mexican laborers, there was no equivalent interest in fostering or otherwise permitting large-scale legal immigration from Mexico.⁴⁶ Opportunities for Mexicans to legally enter the United States were not broadened; instead, methods were devised to encourage the migration, importation and employment of Mexican workers on a large but temporary basis.⁴⁷

The renewed interest in Mexican labor gave rise to the Emergency Farm Labor Program. This program was established by the 1942 Bilateral Agreement⁴⁸ between the United States and Mexico which allowed the temporary migration of Mexican farm workers to the United States. Although the terms of the agreement provided for the extension of contractual and civil rights protections to Mexican braceros, numerous observers of the program deny that these protections were realized.⁴⁹ Neverthe-

44. *Batten, supra* note 38, at 456.

45. *See* note 26 *supra*.

46. During periods of United States territorial expansion or war-related activities, the need for an augmented labor force necessitated an open policy toward legal immigration, or relaxed administration of immigration laws. Immigration from Mexico, however, became the exception to this pattern during this period.

47. This work force was eventually composed of four types: (1) contract workers; (2) commuter laborers; (3) undocumented workers (those having no legal authorization to be in the United States); and (4) legalized aliens.

48. 56 Stat. 1759 (1942).

49. *See e.g.*, E. GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO HISTORY* (1964); PRESIDENT'S COMMISSION ON MIGRATORY LABOR REPORT, *MIGRATORY LABOR IN AMERICAN AGRICULTURE* (1951) (hereinafter referred to as *Report*); R. CRAIG, *THE BRACERO PROGRAM: INTEREST GROUPS AND FOREIGN POLICY* (1971) (hereinafter referred to as *Craig*); O. SRUGGS, *Evolution of the Mexican Farm Labor Agreement of 1942*, 34 *AGRICULTURAL HISTORY* 140-149 (July 1960) (hereinafter referred to as *Sruggs*).

less, what was intended as an emergency measure actually became the principal legal means of entry into the United States for Mexican citizens. Public Law 45⁵⁰ and Public Law 229⁵¹ later confirmed the intergovernmental agreements by legislation. Prior to the enactment of this legislation the United States Employment Service answered petitions by cotton growers and farmer associations by certifying to the INS that 3,000 Mexicans would probably be needed to work on the sugar-beet crop of California.⁵² Similar requests for Mexican farm laborers were made by groups in Texas, New Mexico, Montana and Idaho. In June, 1942, Secretary of Agriculture Wickard, in conjunction with State Department representatives, initiated discussions with the Mexican government regarding the importation of agricultural labor. The two countries signed an agreement on June 23, 1942, which provided for the importation of 50,000 Mexican nationals (later raised to 75,000) for employment as agricultural workers.⁵³

The Farm Security Administration was designated to administer the program and set the terms under which Mexican workers would be employed. The United States Employment Service was charged with the job of certifying that local workers were unavailable in sufficient numbers to meet the demand for labor and that non-local workers had to be recruited and transported to meet such demand. The 1942 agreement was amended in 1943.⁵⁴ Although the amendments made no basic changes in the original agreement, the addition of certain technical phrases to the 1942

50. 57 Stat. 70 (1943). Public Law 45 appropriated \$26,100,000 to the Administration of Food Production and Distribution, appointed pursuant to Executive Order No. 9322 (1943), for assisting in providing an adequate supply of workers for the production and harvesting of agricultural commodities essential to the prosecution of the war. This statute provided for the lessening of restrictions set by the Immigration Act of Feb. 5, 1917, 39 Stat. 878, upon native-born residents of North America, South America, and Central America who wanted to perform agricultural labor in the United States.

51. 58 Stat. 11 (1944). This resolution amended Public Law 45 (1943) by appropriating \$30,000,000 more to be used for providing an adequate supply of agricultural workers during continuation of war hostilities.

52. W. RASMUSSEN, A HISTORY OF THE EMERGENCY FARM LABOR SUPPLY PROGRAM: 1943-1947, at 200 (1951) (Agricultural Monograph No. 13) (hereinafter referred to as *Rasmussen*).

53. 56 Stat. 1766 (1942). The agreements were negotiated under Congressional authority given to the Secretary of Labor, with the Departments of State, Labor, and Justice represented in the negotiations. The Agreement prescribes the recruiting and contracting process, establishes the duties of employers (Farm Security Administration and sub-employers) and workers, provides for individual work contracts and defines the rights which the bracero is to enjoy while residing in the United States. The individual work contract is signed at the reception center immediately before the bracero is turned over to his employer. It is, therefore, no ordinary contract of employment. The signature of the United States government is affixed to its solemn obligations twice—once when the Executive Agreement is negotiated, and again when the individual work contract is closed at the reception center. See also E. GALARZA, STRANGERS IN THE FIELD at 12 (1956).

54. 57 Stat. 1152 (1943).

agreement guaranteed Mexican workers a better work contract. The agreement, as amended, remained in effect for the duration of the war.

In an agreement between the United States and Mexico, finalized on April 29, 1943,⁵⁵ an arrangement comparable to the already existing program of recruitment of farm workers was made with regard to non-agricultural workers. At the insistence of the Mexican government, employment of Mexicans was limited to the railroads and set a maximum number of Mexican railroad workers at 50,000. As in the case of farm laborers, this figure was later increased to 75,000. By the termination of the program at the end of the war, 135,283 workers had come to the United States through its operation.⁵⁶

In summary, the initial admission of contract laborers by legislation was authorized by the Ninth Proviso of the Act of 1917,⁵⁷ the Act gave the Commissioner of Immigration and Naturalization discretionary power to admit otherwise inadmissible aliens applying for temporary admission. Later, the means for admission for labor purposes was supplemented by the Emergency Farm Labor Program (1942). Public Law 45 (1943) codified this program, permitting the entry of agricultural laborers born in Western Hemisphere countries by exempting them from any of the usual requirements for admission. Thus, workers recruited in Mexico were exempted from the head tax, the contract labor laws and the literacy test. Public Law 229 (1944) further expanded the program by authorizing the employment of agricultural workers in packing, canning and general processing of agricultural products. These international agreements terminated December 31, 1947.⁵⁸

In spite of the termination of these programs the importation and utilization of Mexican laborers continued, pursuant to the authority given by the Ninth Proviso of the Immigration Act of 1917.⁵⁹ What ensued was the recruitment of Mexican laborers under a system of individual contracts entered into by workers and employees without governmental control or supervision.⁶⁰ Also employed was a highly questionable process popularly referred to as "legalizing illegals."⁶¹ The latter practice was termed the

55. 57 Stat. 1353 (1943).

56. W. Moore, *America's Migration Treaties*, THE ANNUALS, at 35, (1949).

57. 39 Stat. 878.

58. However, the effects of these labor programs continue to reverberate. Among other things, the contract laborers had with a more affluent economy undoubtedly raised their level of aspiration to where the sense of privation in the environment they were returned to was increased. See Grebler, *supra* note 37, at 30.

59. 39 Stat. 874.

60. Craig, *supra* note 49, at 57.

61. This was a process agreed upon by the United States and Mexico in 1947

dominant feature of the Mexican farm-labor program "not only for 1947 but also in the years since,"⁶² by the Presidential Commission on Migratory Labor (1951). Under this practice Mexican illegal aliens were returned to Mexico temporarily, if not momentarily, and subsequently recruited under contract to employers in the United States. While 74,600 Mexican nationals were brought under contract from the interior of Mexico in the three year period from 1947 to 1949, more than 142,000 illegal Mexican aliens already in the United States were legalized by being put under contract after having been subjected to the "magic of token deportation."⁶³

The initial effort to obtain an agreement with Mexico allowing the importation and employment of Mexican workers was first made by United States officials in 1942.⁶⁴ By 1947, Mexico, despite occasional misgivings, wanted to continue contracting and exporting Mexican workers.⁶⁵ Therefore, on July 13, 1951, President Truman signed Public Law 78,⁶⁶ amending the Agricultural Act of October 31, 1949⁶⁷ to authorize the recruitment and employment of Mexican workers. No less than four days after the passage of this measure, United States officials resumed negotiations with Mexico to initiate a new international agreement.⁶⁸ On August 2, 1951, a new bilateral agreement⁶⁹ was signed between the United States and Mexico. Another piece of legislation

to legalize Mexican aliens illegally in the United States by contracting them at the border as braceros. See J. SAMORA, *LOS MOJADOS: THE WETBACK STORY* 47 (1971) (hereinafter referred to as *Samora*); and *Galarza, supra* note 49, at 69; *Struggs, supra* note 49, at 158; *Report, supra* note 49; *Craig, supra* note 49, at 67-69.

62. *Report, supra* note 49, at 38. The President's Commission on Migratory Labor was established to study the conditions among migratory workers and was also directed to inquire into four broad areas pertaining to the employment of foreign workers: (1) problems created by the migration of workers into the United States for temporary employment, pursuant to the immigration laws or otherwise; (2) responsibilities being assumed by federal, state, county, and municipal authorities with respect to alleviating the conditions among migratory workers, both alien and domestic; (3) whether a sufficient number of local and migratory workers could be obtained from domestic sources to meet agricultural labor needs and, if not, the extent to which the temporary employment of foreign workers might be required to supplement the domestic labor supply and the extent of illegal migration of foreign workers into the United States and the problems created thereby; (4) whether, and in what respect, present law enforcement methods proved effective against illegal migration.

63. *Id.* at 53.

64. *Rasmussen, supra* note 49, at 201.

65. *Craig, supra* note 49, at 57.

66. 65 Stat. 119. This bill added Title V to the Agricultural Act of 1949. It directed that three government agencies were to regulate the importation and employment process: the Secretary of Agriculture was to designate the agricultural commodities and products for which workers were necessary, the Department of Labor was assigned the task of recruitment and management (Farm Placement Service), and the Immigration and Naturalization Service was charged with the responsibility of controlling the entry and departure of contract workers.

67. 63 Stat. 1051.

68. *Craig, supra* note 49, at 77.

69. Pub. L. No. 78, 65 Stat. 119 (1951).

in 1955⁷⁰ extended the authority for the recruitment and importation of Mexican agricultural laborers by three and a half years.

The original expiration date of Public Law 78 was December 31, 1953; however, this was extended six times by Congressional amendments, finally terminating on December 31, 1964.⁷¹ Since the termination of the bracero program, the importation of Mexicans as temporary agricultural laborers has been accomplished in accordance with the provisions of section 101(a)(15)(H)(ii) and section 214(c) of the Immigration and Nationality Act of 1952.⁷²

C. *Illegal Alien Migration*

Complementing the Bracero Program and the importation of Mexican contract laborers was the creation, utilization and regulation of illegal Mexican aliens.⁷³ As in the case of the Bracero Program, the use of illegal Mexican aliens as an additional source of labor demonstrated that Mexicans were desired as laborers rather than as immigrants.⁷⁴ The exploitation of illegal Mexican aliens often was the most predominant and efficient source of alien labor available to the United States.

The size of all Mexican migration to the United States has always been more closely governed by the United States' relative ability to absorb workers instead of by either an abundant or limited supply of Mexican workers. Thus, it is not surprising to

70. Act of August 9, 1955, 69 Stat. 615 (amended Title V of the Agricultural Act of 1949, 63 Stat. 1051). The Act also provided for the relief of employers from liability to the United States for worker's transportation and subsistence costs when such costs have once been paid or provided to the workers by the employers. It also required consultation by the Secretary of Labor with agricultural employers and workers for the purpose of obtaining facts relevant to the supply of domestic farm workers and the wages paid such workers engaged in similar employment.

71. Among the arguments presented in favor of terminating Public Law 78 were that the Mexican labor program: (1) disadvantaged United States workers; (2) caused poverty; (3) ran counter to the free enterprise system; (4) abetted rural unemployment; (5) aided large farms and hurt family farms; (6) subsidized bracero users; (7) domestics were available for stoop labor if greater benefits were offered; (8) recruitment of natives was inadequate; (9) termination of Public Law 78 would not harm consumers; (10) Mexico opposed the program; (11) ex-bracers were easy communist prey, and; (12) Public Law 78 did not end the wet-back problem. H.R. REP. NO. 722, 88th Cong., 1st Sess., at 1-19 (1963).

72. This provision defines nonimmigrants as aliens coming to the United States to perform "temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country." Upon petition by an importing employer of such nonimmigrant classes, 8 U.S.C. § 1184(c) (1970) gives the Attorney General the authority to grant or deny such requests.

73. *Samora, supra* note 61, at 43-46.

74. Contrast this position with that advanced by the United States Immigration and Naturalization Service: Our country is the mecca for many peoples. Those who meet the requirements of our immigration law may enter freely through regular ports of entry. Undesirable aliens, who offer a threat to the security or welfare of our country, are barred, and therefore often attempt to enter surreptitiously. It is the job of the Patrol to anticipate their moves and to stop them at the borders. U.S. DEP'T OF JUSTICE, THE BORDER PATROL: ITS ORIGIN AND ITS WORKS, IMMIGRATION AND NATURALIZATION SERVICE, M-157 (Rev. 1970).

find a striking parallelism between the Bracero Program and the influx of illegal Mexican aliens. From its inception, the Bracero Program actually stimulated the northward movement of Mexican campesinos.⁷⁵

The aspiration of Mexican nationals to work in the United States was stimulated by several factors, but primarily by American enterprisers who wanted to use Mexican laborers, and by the administrative and legislative efforts which were undertaken to minimize enforcement of existing immigration laws along the Mexican border. So great was the number of illegal Mexican aliens during the 1944 to 1954 period that it prompted one writer to proclaim it as the "wetback decade of American immigration history."⁷⁶ In 1944, there were a reported 26,689 illegal Mexican aliens; this figure continuously mounted each year, reaching a high of 1,075,168 in 1954 (see Appendix 2).

It becomes apparent therefore that within the same span of time (1944-1954) the presence of illegal Mexican aliens was tolerated and their numbers allowed to increase in a manner similar to that of legal European immigration during those periods of rapid economic development and expansion in United States history. Yet, while Europeans were encouraged to migrate on a legal and permanent basis, Mexicans were encouraged to migrate on a temporary basis and were left with no alternative other than to enter the United States illegally.

When the need for labor subsided, the "wetback" issue arose and pressure to remove Mexican aliens illegally residing in the United States began to increase. Typically, cooperation among law enforcement, government agencies, employers and townspeople rapidly underwent considerable improvement in their effort to ameliorate the "problem." Thus, it is not surprising that there was a renewed, temporary interest in tightening up Border Patrol enforcement practices, particularly, but not exclusively, along the Mexican border.⁷⁷ In 1947, the Border Patrol set in operation its first concerted effort to regulate the pool of illegal

75. See E. GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO HISTORY* (1964).

76. Hadley, *A Critical Analysis of the Wetback Problem*, 21 *LAW AND CONTEMP. PROB.*, at 334-357 (1956). The term "wetback" has been used to refer to aliens entering or residing in the United States illegally. The term originally applied to persons who swam the Rio Grande river to enter the United States. The Spanish translation "mojado" is not considered derogatory, while the English translation is considered derogatory by many Mexican aliens and Chicanos. The phrase "illegal Mexican alien" is also used to describe persons who are residing illegally in the United States. More recently the phrases "workers without documents" or "undocumented aliens" has been used.

77. In 1947 the Immigration and Naturalization Service admitted that it had actively sought to deport undocumented workers, many of whom "of necessity had been permitted to remain during the war years." *ANN. REP. OF THE IMMIGRATION AND NATURALIZATION SERVICE*, at 18 (1947).

Mexican aliens in the United States.⁷⁸ In that year 182,986 illegal Mexican aliens were located. By 1954 the Border Patrol launched a maximum effort to remove illegal Mexican aliens from the country (Operation Wetback).⁷⁹ With military proficiency, a total of 1,075,168 illegal Mexican aliens were apprehended.⁸⁰

Among other things, Operation Wetback demonstrated the precarious status of Mexicans in the United States and exhibited their vulnerability to regulation and control, but more specifically their vulnerability to a single government agency. A sizable, indeterminate proportion of the Mexican population residing in the United States in the 1950's was removed by the INS and returned to Mexico. Perhaps as much as one-sixth of the total Mexican-origin population living in this country was deported.

The apprehension rate of illegal Mexican aliens during the ten year period immediately following Operation Wetback and the 1955 "clean-up campaign" (1956-1964) remained relatively small in comparison to the previous ten years and to the post-Bracero period (1965-1974).⁸¹

D. *Commuter Migration*

The United States allows aliens lawfully admitted for permanent residence the option of residing outside the country without impeding their right of re-entry on a daily or seasonal basis for work purposes. This governmental privilege is another means aimed at reducing the costs and burden of legal Mexican immigration, while at the same time increasing the utility of Mexicans as laborers. In practice, this is limited to commuters residing in Mexico and Canada.⁸²

78. See ANN. REP. OF THE IMMIGRATION AND NATURALIZATION SERVICE, at 24-27 (1947) for more on this "campaign".

79. "Operation Wetback" refers to a large-scale campaign to locate and remove undocumented Mexican aliens from the United States. It first began along the border, then spread to all parts of the country. In addition, stringent efforts were made to locate and apprehend smugglers and to prevent Mexican aliens from entering the United States illegally. *Id.* at 31-33. See also, *Samora, supra* note 61, at 33-57.

80. See ANN. REP. OF THE IMMIGRATION AND NATURALIZATION SERVICE (1954).

81. See E. GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO HISTORY* (1964); L. GREBLER, *MEXICAN IMMIGRATION TO THE UNITED STATES: THE RECORD AND ITS IMPLICATIONS*, MEXICAN AMERICAN STUDY PROJECT-ADVANCEMENT REPORT 2 (1966); Greene, *Immigration Law and Rural Poverty—The Problems of the Illegal Entrant*, 1969 DUKE L.J. 475 (1969).

82. Included in this class of commuters are United States citizens residing in these two countries. Another class of commuters are persons who are issued border-crossing permits (Form I-186) which entitles them to cross the border to the United States for visiting, shopping, business or pleasure on a seventy-two hour basis. As *Samora* points out, "many persons holding these border-crossing cards do in fact cross the border legally, but with the intention of working, rather than for the purpose for which the permit was issued. *Samora, supra* note 61, at 7.

The Immigration and Nationality Act provides that all aliens who do not fall within one of the classes of nonimmigrants described in 8 USC § 1101(a)(15) are presumed to be immigrants.⁸³ Section 1101(a)(15)(H) classifies as nonimmigrants, aliens who reside in a foreign country which they have no intention of abandoning, and who come into the United States temporarily to perform labor or services, "if unemployed persons capable of performing such labor or service" cannot be found in this country. This would seem to include aliens admitted for permanent residence, residing in Mexico and commuting to the United States to work.

Such immigrants (i.e., aliens who cannot show that they are entitled to nonimmigrant status) are subject upon entry to the Act's numerical limitations on admission to the United States. Two groups are excepted: (1) "Immediate Relatives" of United States citizens, and (2) "Special Immigrants."⁸⁴

However, the INS has long regarded aliens admitted for residence, but residing in Mexico or Canada, as part of the category of "Special Immigrants" described in 8 USC § 1101(a)(27)(b): aliens "lawfully admitted for permanent residence" who are "returning from a temporary visit abroad."⁸⁵ The United States Supreme Court recently upheld this construction of the Act in *Saxbe v. Bustos, et al.*,⁸⁶ partly on the basis that commuters do not fit into any class of nonimmigrants,⁸⁷ but primarily because the INS has long construed the statute in that manner:

Our conclusion reflects the administrative practice, dating back at least to 1927 when the Bureau of Immigration was part of the Department of Labor On April 1, 1927, it issued General Order No. 86. Under the order, commuters were required to gain admission as immigrants before they

83. 8 U.S.C. § 1184(b) (1970).

84. 8 U.S.C. § 1101(a)(27)(b) (1970); see H.R. Rep. No. 93-461, 93d migratory workers could be obtained from domestic sources to meet agricultural Cong., 1st Sess., at 16 (1973); the difference between a "special immigrant" and "nonimmigrants" is covered by § 1101(a)(15)(H).

85. Obviously, this is a fiction because such aliens are "returning" from their homes, not a "temporary visit abroad."

86. — U.S. —, 95 S. Ct. 272 (1974). The *Saxbe* case has several interesting sidelights, among them being that the case was filed by the United Farmworkers Organizing Committee who felt that by allowing workers to commute in this manner, the INS was overly hampering that union's organizing efforts among farm workers.

While 5-4 decisions by the "Nixon" Supreme Court have become commonplace, the alignment of the Justices in this case seems noteworthy: Justice Douglas delivered the opinion of the Court, joined by Burger, Stewart, Powell and Rehnquist; Justice White filed a dissenting opinion in which Brennan, Marshall and Blackmun joined.

87. *Id.* at 275:

An alien does not qualify as a nonimmigrant under this class of nonimmigrants if he seeks to perform temporary labor at a time when unemployed persons capable of performing that labor can be found in this country [8 U.S.C. § 1101(a)(15)(H)(ii)].

could have border crossing privileges. The Order provided that "aliens who have complied with the requirements of this General Order governing permanent admission will be considered as having entered for permanent residence."

"Thus," said the Court of Appeals in the instant [case], "the daily commuter was born."⁸⁸

Ordinarily, the admission of aliens for temporary labor is regulated by the administrative procedures of agencies such as the Department of Labor, the State Department and the INS. The United States Employment Service, a division of the Department of Labor, is the designated administrative unit responsible for certification of the unavailability of local domestic workers. Upon a petition filed by a prospective employer or trainer, and after the Department of Labor has issued a clearance, the Commissioner of Immigration and Naturalization, under authority of the Attorney General, makes the final determination. Thereafter, the employer, the alien and the American Consul are notified of the conditions under which authorization is granted. The alien may then obtain a visa to enter the United States.⁸⁹

Although information regarding the number of Mexican border commuters is not readily available, David North reports that there are approximately 61,900 commuters (43,700 Mexican aliens and 18,200 United States citizens) living in Mexico and working in the United States.⁹⁰

III. POST-BRACERO MIGRATION

A. *The Anti-Alien Movement Revisited: Federal Legislative Efforts.*

In 1954, attempts were made to enact legislation designed to control illegal immigration.⁹¹ Although the legislation failed to be enacted, the interest generated was reflected in the number of aliens apprehended. In 1955, a peak of 242,608 aliens were apprehended, decreasing thereafter to a low of 30,000 in each

88. *Id.* at 278.

89. See PROCEDURES UNDER WHICH ALIENS MAY BE ADMITTED TO THE UNITED STATES TEMPORARILY FOR EMPLOYMENT, REPORT OF THE SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION, at 94-95 (1968).

90. D. NORTH, THE BORDER CROSSERS: PEOPLE WHO LIVE IN MEXICO AND WORK IN THE UNITED STATES (1970).

91. Two bills were considered: S. 3660, 83d Cong., 2d Sess. (1954), introduced as the "Illegal Employment of Aliens Act of 1954," sought to make it unlawful to employ, offer to employ, or pay a thing of value for services rendered to any alien, of whom it is known or there are reasonable grounds to know that such aliens entered the United States within the last three years without having been duly admitted to the United States; and S. 3661, 83d Cong., 2d Sess. (1954), introduced as the "Illegal Transportation of Aliens Act of 1954," which sought to authorize the seizure and forfeiture of any vessel or vehicle used by individuals or companies who knowingly transport immigrants who have entered the United States illegally within three years thereof.

1959 and 1962. Since 1965 apprehension of illegal aliens from Mexico has risen phenomenally. In the wake of a growing recession and with the recent threat of economic depression, the issue of illegal migration from Mexico has again caught the concern of public officials and organized interest groups.

In 1972, Democratic Congressman Peter W. Rodino introduced H.R. 14831⁹² as an amendment to the Immigration and Nationality Act of 1952. Unlike the 1954 proposals, this bill sought to make the employment of illegal aliens a crime, providing penalties for employers who knowingly hired illegal aliens. After deliberation in committee sessions, H.R. 14831 was withdrawn and replaced by an abbreviated bill, H.R. 16188.⁹³ Known as the "Rodino Bill," H.R. 16188 provided for the adjustment of status of aliens under section 145⁹⁴ of the Immigration and Nationality Act, for sanctions against employers of aliens under section 274,⁹⁵ and for the disclosure of the names of illegal aliens who are receiving assistance under the Social Security Act.⁹⁶

On September 12, 1972, the House of Representatives passed H.R. 16188. The bill was then sent to the Senate where it was referred to the Judiciary Committee. Receiving no action, the bill died in Committee. On March 22, 1973, a similar bill, H.R. 982,⁹⁷ was introduced by Congressman Rodino; it was subsequently passed by the House of Representatives.

On July 29, 1974, Democratic Senator Edward Kennedy introduced Senate Bill 3827.⁹⁸ This bill does not materially differ from the Rodino Bill.⁹⁹ According to Senator Kennedy, Senate Bill 3827, if enacted, would:

[P]rovide authority to regularize status of illegal aliens and other aliens present in the U.S. in violation of law, who have been physically present for at least 3 years and are otherwise admissible for permanent residence.

[P]lace reasonable sanctions on the employers of illegal aliens.

[P]rovide for adjustment of status of nonimmigrant aliens from Western Hemisphere countries on the same basis as non-immigrant aliens from Eastern Hemisphere countries.

[A]mend the Civil Rights Act of 1964 to bar job discrimina-

92. H.R. 14831, 92d Cong., 2d Sess. (1972).

93. H.R. 16188, 92d Cong., 2d Sess. (1972).

94. 8 U.S.C. § 1255 (1970).

95. 8 U.S.C. § 1324 (1970).

96. This focus on the Social Security Act led to subsequent legislation. See text accompanying note 101 *infra*.

97. H.R. 982, 93d Cong., 1st Sess. (1973).

98. S. 3827, 93d Cong., 2d Sess. (1974).

99. The most significant difference is the civil rights feature in the Kennedy Bill.

tion against the aliens lawfully admitted for permanent residence.¹⁰⁰

Commensurate with these legislative efforts, Congress in 1972 revised social security procedures, making it more difficult for illegal aliens to obtain social security cards.¹⁰¹ According to Arthur E. Hess, Deputy Commissioner of Social Security, the 1972 amendments increase the penalties for making false statements for the purpose of obtaining a social security number, and for misusing a social security number or misrepresenting a number to be a valid social security number.¹⁰² In addition to making it more difficult for an alien to obtain a social security number, the new procedures facilitate identification and location of deportable Mexican aliens.¹⁰³

B. State Legislative Efforts

In 1971, California passed the Dixon-Arnett Bill,¹⁰⁴ becoming the first state to enact a law prohibiting the employment of illegal aliens and making it unlawful for employers to knowingly hire illegal aliens. The Dixon-Arnett law has been strongly attacked by Chicano political leaders and organizations advocating fair treatment of alien workers. In 1974, the California Court of Appeals held the statute to be unconstitutional.¹⁰⁵ The central issue regarding the constitutionality of this statute was whether the federal government has the sole and exclusive power to legislate in immigration matters.

100. CONG. REC.: S. 3827, 93d Cong., 2d Sess., 120 CONG. REC. 13558 (1974).

101. See Pub. L. No. 92603, 86 Stat. 1364 (1972). The issue of social security cards was frequently raised in the 1971 and 1972 Rodino Hearings.

102. The 1972 amendments require the Secretary of Health, Education and Welfare to take certain administrative measures in order to further tighten the procedures for issuance of social security numbers; to assign social security numbers to aliens at the time of their lawful admission either for permanent residence or under authority of the law which permits employment; and to assign social security numbers to individuals who apply for or receive cash benefits under any program financed in whole or in part from federal funds. The amendments further authorize the Secretary to assign social security numbers to children of pre-school age upon the request by a parent or guardian and to all children of school age at the time of first enrollment in school. The provisions require all applicants to submit sufficient evidence to establish age, identity and citizenship or alien status. 50 INTERPRETER RELEASES No. 10, at 63 (Mar. 23, 1973).

103. *Id.* at 66.

104. CAL. LABOR CODE § 2805 (West Supp. 1975).

105. *Dolores Canning v. Howard*, 40 Cal. App. 3d 673 (1974). CAL. LABOR CODE § 2805 provides that "no employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers." The court in *Dolores* found § 2805 to be unconstitutional because: (1) in enacting the Immigration and Naturalization Act of 1952, as amended, Congress expressed its judgment to have uniform federal regulations in matters affecting employment of aliens and non-immigrants thus barring state action in the field; and (2) it encroaches upon and interferes with a comprehensive regulatory scheme enacted by Congress in the exercise of its exclusive power over immigration.

C. *Administrative Efforts (INS)*

The INS claims that ninety-nine percent of all deportable aliens located in 1973 who entered surreptitiously were Mexican aliens. Therefore, of the 551,328 deportable aliens located in 1973 and classified as surreptitious entries, 550,776 were Mexican aliens.¹⁰⁶ For the most part, the attention focused on this level of surreptitious entry has been especially critical in recent years. Mexican aliens have been blamed for depressed wages, strike breaking, high unemployment, border poverty and a variety of other social ills.¹⁰⁷

Consequently, the issue of illegal aliens has drawn considerable public attention on both sides of the border. Mexico gave official recognition to the problem in June, 1972, when Mexican President Luis Echevarria addressed a joint-session of Congress and held meetings with high level United States government officials, including former President Richard Nixon. Bilateral study commissions were established by presidential appointments in both countries to undertake a comprehensive study of problems relating to "illegal immigration from Mexico." In January, 1973, the two commissions issued final reports with differing conclusions. Among the recommendations of the Mexican Study Commission was a reinstatement of the Bracero Program. This recommendation was rejected by the United States Study Commission.¹⁰⁸

In other developments, California Attorney General Evelle Younger and other law enforcement officials have sanctioned the police practice of detaining and questioning persons suspected of being illegal aliens. Chicano political leaders have charged that this practice constitutes "discrimination and results in undue harassment," and that it, in effect, creates "a legal police state

106. ANN. REP. OF IMMIGRATION AND NATURALIZATION SERVICE 9 (1973). See also C. Gorden, *The Problem of Illegal Entries From Mexico*, I & N REP., at 43-48 (Spr. 1973); and D. Coppeck, *Border Patrol Operations—1970*, I & N REP., at 33-35 (Jan. 1971).

107. See e.g., A. FROGOMEN, *THE ILLEGAL ALIEN: ECONOMIC REFUGEE OR CRIMINAL?* (1972); A. PORTÉS, *Return of the Wetback*, SOCIETY, Vol. 11, No. 3, at 40-46 (Mar./Apr. 1974); J. BUSTAMANTE, *The Wetback Deviant*, AMERICAN JOURNAL OF SOCIOLOGY, Vol. 7, No. 4 (Jan. 1972); "Don Chano" *Autobiografía de un emigrante Mexicano*, LA REVISTA MEXICANA DE SOCIOLOGIA, Vol. 33, No. 2, at 333-74 (Apr./Jun. 1971); *El Espalda Mojada, informe de un observador participante*, REVISTA DE LA UNIVERSIDAD DE MEXICO, Vol. 27, No. 6, at 26-46 (Feb. 1973); U.S. DEP'T OF LABOR, *THE LEGAL AND ILLEGAL CALIFORNIA FARMWORKER: SOME IMPLICATIONS FOR UNEMPLOYMENT INSURANCE, MANPOWER ADMINISTRATION*, at 289 (Mar. 1973).

108. See U.S. DEP'T OF JUSTICE, *A PROGRAM FOR THE EFFECTIVE AND HUMANE ACTION ON ILLEGAL MEXICAN IMMIGRANTS: FINAL REPORT OF THE SPECIAL STUDY GROUP ON ILLEGAL IMMIGRANTS FROM MEXICO*, at 51 (Jan. 1973); and REPUBLIC OF MEXICO, *RESULTADO DE LA ENCUESTA REALIZADA POR LA COMISION INTERSECRETADORES MEXICANOS A ESTADOS UNIDOS DE AMERICA*, at 39 (Jan. 1973).

against all persons of Mexican ancestry" be they illegal aliens or Mexican Americans.¹⁰⁹

A national movement to organize and to promote the protection and equal treatment of alien workers continues to grow in strength. CASA (Centro de Accion Social Autonoma) has emerged as the leading organization behind this movement.¹¹⁰ The American Civil Liberties Union (ACLU) and the National Lawyers Guild have also been vocal supporters of this latest movement to protect alien workers.¹¹¹ The National Urban Coalition recently became involved in the problems of immigration and proposed a research project to study the problem.¹¹²

In a recent suit, the ACLU and the Mexican American Legal Defense and Educational Fund (MALDEF), with the support of the Immigration Lawyers Association and CASA have charged the INS with indiscriminate and unconstitutional arrests and deportation of persons of Latin or Raza appearance.¹¹³ A similar suit against the INS was filed by the ACLU and other parties in Chicago and New York.¹¹⁴

Not all activity has been directed at the alien; the INS is currently under investigation for corruption.¹¹⁵ In May 1972, then Attorney General Richard G. Kleindiest ordered a grand jury investigation and ordered the Criminal Division of the Justice Department to initiate a full scale probe.¹¹⁶ Representative John M. Murphy (D.N.Y.) alleged that the issue involves "corruption of high government officials in the area of serious narcotics trafficking, perjury, smuggling, bribery, fraud, obstruction of justice and even rape."¹¹⁷ "Operation Clean Sweep" was disbanded in

109. *Police Right to Hold Suspected Aliens Affirmed*, Los Angeles Times, Aug. 29, 1973.

110. CASA originated in Los Angeles in 1971 and has since opened offices in San Antonio, Texas; Chicago, Illinois; Santa Ana, Calif.; San Fernando, Calif.; Greeley, Colorado; New York, N.Y.; and National City, Calif.

111. During the 1960's the ACLU and the Committee for the Protection of the Foreign Born were very active in protecting the rights of alien workers. In 1960 a petition was presented to the United Nations protesting the treatment of Mexican immigrants in the United States. See, Comite de Los Angeles Para la Proteccion del Nacido en el Extranjero, *Nuestra Insignia de Infamia, Peticion a Las Nacimes Unidas Sobre El Tratamiento al Immigrante Mexicano* (Roots Without Rights), American Civil Liberties Union, Los Angeles Chapter (1958).

112. The National Urban Coalition proposes that this study focus on: (1) the impact of illegal aliens on the economy of the United States; (2) the impact of illegal aliens on governmental services; (3) the enforcement practices of the INS; and (4) the effect of United States Immigration policy on international relations.

113. *MALDEF and ACLU Sue Immigration and Naturalization Service*, Agenda, Nat'l Council of La Raza, at 21 (Win. 1973).

114. Chicago Sun-Times, Aug. 22, 1973, § 1, at 10.

115. Walters, *Mexican Border Scandal Eludes Grasp of Justice*, Washington Star-News, July 29, 1974, § A, at 1.

116. The investigation was referred to as "Operation Grand Sweep".

117. Severo, *The Plight of the Wetbacks*, New York Times Magazine, Mar. 10, 1974, at 17.

September, 1973. On June 25 and 26, 1974, the House Subcommittee on Government Operations held closed hearings to investigate allegations of a departmental cover-up in "Operation Clean Sweep." Despite the availability of new information and charges of a cover-up, the subcommittee terminated the hearings and referred the matter back to the Justice Department.¹¹⁸ In August, 1974, Attorney General William B. Saxbe ordered a new investigation and appointed FBI Director Clarence M. Kelly to take personal charge.¹¹⁹ In light of Watergate, a serious question exists as to the willingness of the Justice Department to seriously investigate its own unit.

The INS is under pressure from various sources, including the Committee on Legal and Monetary Affairs of the House Committee on Government Operations, to control the influx of illegal aliens.¹²⁰ In addition to congressional pressure, the INS has been under criticism from powerful segments of organized labor, particularly in regard to INS activities in agricultural areas where the United Farmworkers Union organizes against a coalition of growers and the Teamsters Union.¹²¹

IV. CONCLUSION

In times of economic crisis, as exist today and existed in the 1930's (and to a lesser degree in the middle 1920's and 1950's), national attention is focused on Mexican aliens as displacers of domestic labor. To accommodate this view, restrictive immigration law policies have historically followed. Presently, the Rodino Bills¹²² before Congress represent one such contemporary effort. The fact traditionally lost sight of in shaping this type of legislation is that Mexican aliens in the United States have entered at the behest and through the active solicitation and encouragement of many of the same economic interests that today proselytize for their expulsion and exclusion through the rigorous application or change in immigration laws.¹²³ For example, serving as open invitations to Mexican migration have been bracero type programs throughout this century,¹²⁴ allowing commuter status,¹²⁵ and utilization of illegals.¹²⁶ In these forms Mexican aliens have been told

118. *Id.*

119. Washington Star-News, Aug. 23, 1974.

120. See D. North, *U.S. Government Moving to Cut Back Immigration from Mexico*, Agenda, Nat' Clouncil of La Raza (Win. 1973).

121. See Subcomm. on Immigration, Citizenship and International Law of the House Comm. on the Judiciary, 93d Cong., 1st Sess., App. 1, at 155 (1973).

122. H.R. 981 & H.R. 982, 93d Cong., 1st Sess. (1973).

123. This statement is not meant to encompass Mexican aliens who have qualified for entry based on certain relative relationships, i.e. 8 U.S.C. § 1151(a) (1970).

124. See text accompanying notes 57-59 *supra*.

125. See generally Part II D of this article *supra*.

126. See generally Part II C of this article *supra*.

that their labor is welcomed in the United States, and they have responded accordingly.

The "illegal alien" problem is therefore one whose seed has been planted time and again by the United States when it has been in need of Mexican labor. When expediency better serves, however, immigration laws have been administered and changed in response to a problem perceived as having been created by illegal aliens, when in fact it is largely of the United States' own making.

Whatever other ills undocumented aliens are blamed for—among the most common being their drain on welfare rolls and the criminal and health hazards they pose—these charges, taken in the context in which they are made, must be considered as contrived in order to support the reimposition of a restrictive immigration policy. The fact is that exploitation of Mexican labor is not currently desirable.,

APPENDIX I

MEXICAN IMMIGRATION 1869-1973

Year	Total	Year	Total	Year	Total	Year	Total
1869	320	1895	116	1921	29,603	1947	7,775
1870	463	1896	150	1922	18,246	1948	8,730
1871	402	1897	91	1923	62,709	1949	7,977
1872	569	1898	107	1924	87,648	1950	6,841
1873	606	1899	163	1925	32,378	1951	6,372
1874	386	1900	237	1926	42,638	1952	9,600
1875	610	1901	347	1927	66,766	1953	18,454
1876	631	1902	709	1928	57,765	1954	37,456
1877	445	1903	528	1929	38,980	1955	50,772
1878	465	1904	1,009	1930	11,915	1956	65,047
1879	556	1905	2,637	1931	2,627	1957	49,154
1880	492	1906	1,997	1932	1,674	1958	26,712
1881	325	1907	1,406	1933	1,514	1959	23,061
1882	366	1908	6,067	1934	1,470	1960	32,684
1883	469	1909	16,251	1935	1,232	1961	41,632
1884	430	1910	17,760	1936	1,308	1962	55,291
1885	323	1911	18,784	1937	1,918	1963	55,253
1886	—	1912	22,001	1938	2,014	1964	32,967
1887	—	1913	10,954	1939	2,265	1965	37,969
1888	—	1914	13,089	1940	1,914	1966	45,163
1889	—	1915	10,993	1941	2,068	1967	42,371
1890	—	1916	17,198	1942	2,182	1968	43,563
1891	—	1917	16,438	1943	3,985	1969	44,623
1892	—	1918	17,602	1944	6,399	1970	44,469
1893	—	1919	28,844	1945	6,455	1971	50,103
1894	109	1920	51,042	1946	6,805	1972	64,040
						1973	70,071
						TOTAL	1,754,611

SOURCES: Period from 1869 to 1898 shows the number of immigrant aliens (Mexican) admitted by country of origin or nationality taken from *International Migration Statistics, Vol. I*, a publication (No. 14) of the National Bureau of Economic Research, Inc. 1929, pp. 384-393. (1886-1893, information not available).
 Period from 1899 to 1909 shows the number of immigrant aliens (Mexican) admitted by race of people (*International Migration Statistics, 1929: 432-443*).
 Period from 1910 to 1964 shows the number of Mexican Immigrants admitted (Grebler, 1966: 106). Figures from 1965 to 1972 taken from the Annual Reports of the Immigration and Naturalization Service.

APPENDIX 2

MEXICAN ILLEGAL ALIENS REPORTED

Year	Total	Year	Total	Year	Total
1924	4,614	1941	6,082	1958	37,242
1925	2,961	1942	DNA	1959	30,196
1926	4,047	1943	8,189	1960	29,651
1927	4,495	1944	26,639	1961	29,817
1928	5,529	1945	63,602	1962	30,272
1929	8,538	1946	91,456	1963	39,124
1930	18,319	1947	182,986	1964	43,844
1931	8,409	1948	179,385	1965	55,349
1932	7,116	1949	278,538	1966	89,751
1933	15,865	1950	458,215	1967	108,327
1934	8,910	1951	500,000	1968	151,000
1935	9,139	1952	543,538	1969	201,000
1936	9,534	1953	865,318	1970	277,377
1937	9,535	1954	1,075,168	1971	348,178
1938	9,684	1955	242,608	1972	430,213
1939	9,376	1956	72,442	1973	576,823
1940	8,051	1957	44,451		
				TOTAL	7,259,962

SOURCES: From 1924 to 1941: Annual Report of the Secretary of Labor.
 From 1942 to 1960: Special compilation of the Immigration and Naturalization Service. From 1961 to 1972: Annual Report of the Immigration and Naturalization Service.