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# Mexico & the United States

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The Politics of Partnership

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Have Economic Reforms in Mexico Not Generated Growth?"; and Arias et al., "Policies to Promote Growth and Economic Efficiency in Mexico." Although some of the factors mentioned by these authors to explain the low rates of economic growth in Mexico are common to our explanation for the lack of convergence between Mexico and the United States, we do not necessarily agree with all their conclusions or with the relevance of some of the aspects that they emphasize. A full discussion of these issues, however, would fall beyond the scope of this chapter.

28. See Esquivel and Hernández-Trillo, "How Can Reforms Help Deliver Growth in Mexico?"

29. See Del Villar, "Competition and Equity in Telecommunications."

30. See, for example, Blecker, "External Shocks, Structural Change, and Economic Growth in Mexico," and the references therein.

31. See Esquivel, "De la inestabilidad macroeconómica al estancamiento estabizador."

32. Pete Engardio and Geri Smith, "Business Is Standing Its Ground," *Business Week*, April 20, 2009, 34–39.

33. American Chamber of Commerce of Mexico, "Foreign Direct Investment in Mexico: Is Your Investment Safe?" June 2010. Emphasis in original.

34. Regarding the impact of exchange rates and transportation costs, see Ylan Q. Mui, "Ikea Helps a Town Put It Together," *Washington Post*, May 31, 2008; and Jeff Rubin and Benjamin Tal, "Will Soaring Transport Costs Reverse Globalization?" *StratEcon*, CIBC World Markets, May 27, 2008, 4–7. In regard to quality concerns about Chinese imports, see Engardio and Smith, "Business Is Standing Its Ground."

35. See Roig-Franzia, "Ford's 'Global Car' to Roll Out in Mexico," *Washington Post*, May 31, 2008; and Paul Kieiman, "GM to Invest \$500M in Mexico," *Wall Street Journal*, August 4, 2010.

36. Calculated from data in US Bureau of Economic Analysis, International Transactions Accounts, Table 2, release of March 16, 2011, <http://www.bea.gov>.

37. See Hanson, "Illegal Migration from Mexico to the United States," for estimates of wage gaps for particular categories of workers.

38. See Pastor, *Toward a North American Community*.

# 6

## Migration: Policies and Politics

David Fitzgerald and Rafael Alarcón

Migration from Mexico to the United States takes place on a massive scale. The 11.5 million people of Mexican birth living in the United States represent more than the total number of immigrants in any other country in the world.<sup>1</sup> The history of large-scale migration stretches back to the Mexican Revolution, with smaller movements even earlier. Many Mexican towns have developed a dependence on remittances and deep cultural traditions of migration in which young people grow up expecting to go north as a rite of passage.<sup>2</sup> Mexican migration is deeply rooted on a demographic, historical, economic, and cultural level that policymakers in both countries struggle to reshape.

After a difficult first decade, Mexico and the United States confront the twenty-first century with several unresolved issues regarding this migration. While Mexicans are by far the largest group of legal immigrants in the United States, they are also the largest group of unauthorized migrants. The system in the United States to regulate legal, permanent immigration is primarily based on family reunification and skilled migration. These restrictions make it all but impossible for Mexicans to legally immigrate unless they have special skills or a nuclear family member in the United States who can sponsor them. Consequently, 6.7 million Mexicans work in the United States illegally, and Washington seems incapable of resolving their status through comprehensive immigration reform.

While the US Congress has remained gridlocked on immigration policy, growing anti-immigrant movements at the subnational level have enacted stringent measures against undocumented migrants. Mexicans

and other Latinos are the clear targets of most of these policies, such as Arizona's Senate Bill 1070 signed into law in 2010. Strong tensions have emerged within different levels of US government over the ability of local and state lawmakers to create their own policies. In this disputed and dynamic area of the law, the federal court system is deciding the limits of subnational immigration enforcement in piecemeal fashion. Meanwhile, the administrations of George W. Bush and Barack Obama took executive action to ratchet up dramatically the numbers of deportations from the interior of the United States, again with disproportionate impacts on the Mexican population. Along the border, an increasingly expensive buildup of border enforcement shows little immediate deterrence against those who try to cross illegally, even as it may provide some "remote deterrence" of potential unauthorized migrants from ever leaving their hometowns in the Mexican interior.

For its part, since the inception of the global economic crisis in 2008, Mexico has experienced a decrease in the outward flow of undocumented persons to the United States and a reduction in migrant remittances. At the same time, around sixty thousand Mexicans died in drug-related violence during President Felipe Calderón's tenure from 2006 to 2012. Anecdotal reports suggest this violence has affected migration patterns by creating a new incentive for Mexicans to flee violence to the United States if they can, a phenomenon that especially affects middle- and upper-class people from northern Mexico moving to safer areas in Texas and Southern California. At the same time, the violence in the north creates a disincentive for unauthorized migrants to leave the Mexican interior to cross a border zone, where they fear the predations of gangs and shakedowns by corrupt military and police. In addition, violence has diminished the possibilities of temporary and permanent return of Mexican migrants living in the United States, where they feel safer than in Mexico. The Mexican government is also under international scrutiny for the violence against unauthorized Central American migrants who try to cross the country to reach the United States. Finally, Mexico and the United States face a humanitarian crisis of more than five thousand deaths of persons who have died trying to cross the US border clandestinely since 1994.

### **US Immigration Law and Current Patterns**

More than half of the Mexican-born population in the United States is living there illegally. Commentators and politicians in the United States frequently ask why Mexicans don't simply "get into line" to immigrate

through official channels.<sup>3</sup> In practice, many Mexicans do get into line. The 5.7 million Mexicans legally living in the United States in 2008 represented 21 percent of all legal immigrants, far outnumbering any other immigrant nationality of origin.<sup>4</sup> Yet for the many Mexicans who lack specialized skills or ties to close family members in the United States, the supply of immigrant visas is dramatically lower than the high demand for their labor. For them, the line to become a legal immigrant never moves forward. Efforts to prevent unauthorized Mexicans from entering and working in the United States have proved largely ineffective at the border, though those efforts have unleashed a set of unintended and often harmful social consequences.

Historically, immigration policy in the United States has at times treated Mexicans differently from other nationals, but even where the law is universal, it affects Mexico with particular intensity. The line to work in the United States begins with several temporary-worker programs. Mexicans were issued 94 percent of the 150,000 H-2A temporary agricultural visas granted in 2009 and 66 percent of the 56,000 H-2B and H-2R seasonal nonagricultural worker visas.<sup>5</sup> Of the 462,000 H-1B and L1 visas issued to skilled workers, 4.2 percent were given to Mexicans, putting Mexico in fourth place ahead of China.<sup>6</sup> Congress sets visa caps on the programs, with the exception of the H-2A agricultural visas, which do not have a cap but remain unpopular among farmers because of their onerous requirements and the ready supply of unauthorized labor.<sup>7</sup>

Mexican participation in the Treaty National (TN) visa program, created after the signing of the North American Free Trade Agreement (NAFTA) in 1994 to facilitate the temporary movement of qualified professionals between Canada, Mexico, and the United States, increased markedly after 2000. The number of Mexican NAFTA professionals admitted by the United States rose from 1,269 in 2003 to more than 21,000 in 2009. Unlike the H-1B visa, the NAFTA visa does not potentially pave the way to permanent residence in the United States.<sup>8</sup>

The line for long-term or permanent immigration is governed by a separate set of regulations. Immigrant visas authorize a legal permanent resident (LPR) status that is renewable every ten years.<sup>9</sup> In 2008, 3.3 million Mexicans comprised 26 percent of all LPRs, five and a half times as many as any other national-origin group.<sup>10</sup> A preference system regulates the number of LPR visas issued every year. In 2009, 226,000 annual visas were available for family preferences, broken down into four subcategories for different kinds of family relationships, ranging from unmarried adult sons and daughters of US citizens (first preference) to brothers and sisters of adult US citizens (fourth preference). The employment prefer-

ence system allots 140,000 visas, the vast majority of which are for skilled workers and their families. In a putative attempt to maintain the diversity of new immigrants, and in an effort to keep any one country from dominating flows, each country in the world is limited to receiving 7 percent of the total number of family-sponsored and employment preferences, meaning a cap of 25,620 visas per country under the preference system in 2009. A further 55,000 "diversity" visas were available in 2009 for nationals of countries with low levels of emigration to the United States, a category that does not apply to Mexicans. Spouses and minor children of US citizens and parents of adult citizens are exempt from the caps in the family-preference system, and typically account for more than 40 percent of new LPRs.<sup>11</sup>

How do Mexicans benefit or suffer discrimination under the current system? Informal discrimination, whether practiced by US Border Patrol agents, immigration officers at points of entry, or immigration courts, is difficult to assess systematically. Within the formal sphere, the same policies can be considered discriminatory or universalistic depending on whether the unit of analysis is the *source country* or the *individual citizen* of the source country. During the national origins quota system from 1921 to 1965 that differentially assigned immigration quotas to different countries based on their ethnic desirability, Mexico and the rest of the countries in the Western Hemisphere were exempt from the quotas. Most policymakers preferred Mexican immigrant workers because they were thought to exhibit a circular migration pattern and reluctance to settle permanently. A limit was first set on immigrants from the Western Hemisphere in 1968. Seven years later, the State Department dropped its opposition to country limits on Mexico and Canada, which it had historically rejected based on the logic that they were neighboring countries. When country limits within the Western Hemisphere were introduced in 1976, legal immigration from Mexico immediately fell by 40 percent. Presidents Gerald Ford and Jimmy Carter unsuccessfully urged a reform that would provide more visas for Mexicans.<sup>12</sup>

All independent countries now receive the same maximum number of immigrant visas under the employment and family preferences. The country quotas are nondiscriminatory where the source country is the unit of analysis. At the same time, provisions for the reunification of the closest family members outside of the country caps have favored Mexico as a country, given its long, sustained, massive migration to the United States. There were 165,000 new Mexican LPRs in 2009, despite the country quota of 25,620, because of the large number of US-born and naturalized citizens of Mexican origin who can sponsor their parents, spouses, and minor children outside of the family-preference caps.<sup>13</sup> Parents, spouses, and

minor children of adult US citizens only wait a short period to obtain permanent residence, thus providing an important incentive for naturalization.

Where the individual is the unit of analysis, the limit of 25,620 per country discriminates against people from countries where there is a high level of demand to immigrate to the United States. Under the current system, Mexico is treated the same as small countries such as Djibouti, with little history of migration to the United States. Consequently, the waiting period to process an immigrant visa through family-preference categories under the country limits varies widely among national-origin groups. For example, in fiscal year 2011, unmarried adult daughters and sons of US citizens were waiting nineteen years if they were Mexican, fourteen years if they were Filipino, and only five years on average if they were nationals of other countries.<sup>14</sup>

Policies vary in the extent to which their discriminatory effects are intended or unintended. Where national origin is not an explicit criterion for selection, discriminatory effects may still be intended in the degree to which policymakers are aware that social attributes are differentially distributed among national populations. A preference for skilled migrants will thus favor the British as a group, for example, because the British are disproportionately highly skilled, and disfavor Mexicans as a group, even if individual Mexicans are treated the same as individual Britons. On the other hand, the large Mexican presence in US agriculture gives Mexicans an advantage relative to other potential agricultural migrants in Central America and the Caribbean. For instance, the 1986 Immigration Reform and Control Act (IRCA) was universalistic in form, but Mexicans were three-quarters of the immigrants that it legalized, and the percentage was even higher in the Special Agricultural Worker program under which legalization requirements were looser.<sup>15</sup>

Notwithstanding the large numbers of Mexicans who do benefit from the current US immigration system, it is practically impossible for those who are low-skilled to obtain an immigrant visa under the employment preferences. Given the US demand for Mexican labor and the persistent wage gap between the two countries in a context of massive migration sustained for a century, the current system guarantees that many Mexicans will continue to enter legally when they can under family sponsorship. When they cannot, many will choose to enter illegally.

### Illegality and Government Responses

The Department of Homeland Security (DHS) estimates that there were 6.7 million unauthorized immigrants from Mexico in 2009, representing

62 percent of the total unauthorized population.<sup>16</sup> Just over half of all Mexicans living in the United States are unauthorized, and among Mexicans who have been in the country for less than five years, 85 percent are unauthorized.<sup>17</sup> Eighty-six percent of the 613,000 foreign nationals apprehended at the border and in the interior of the United States by the DHS in 2009 were Mexican.<sup>18</sup>

There are several principal modes of illegality. The most obvious is what the US government terms “entry without inspection”—clandestine entry or entry through an official crossing point with fraudulent documents. Most migrants apprehended when entering clandestinely forego their right to an immigration hearing and are quickly returned to Mexico with little further consequence through the “voluntary departure” process. An estimated 25 to 40 percent of all unauthorized immigrants enter the United States legally and then overstay their visas, a figure that is probably lower for Mexicans than other unauthorized immigrants.<sup>19</sup> Other foreigners are living in the country legally as tourists or students, but are violating the terms of their visa by working. An unknown number temporarily fall out of status due to long bureaucratic delays while adjusting their visas.

Building on the legal fact that Mexicans are disproportionately represented among the unauthorized population, restrictionist politicians have been effective in discursively presenting illegal immigration as a “Mexican” problem. For example, in former California governor Pete Wilson’s 1994 reelection campaign, television advertisements showed surveillance video of scores of migrants running up the freeway past a US border entry point as an announcer ominously intoned, “They keep coming.” Wilson’s campaign used the advertisements to present an image of Mexicans pouring across a border out of control. He won reelection and helped support the passage of Proposition 187, which stripped unauthorized migrants of the right to a wide range of social services, though most of the proposition was subsequently declared unconstitutional in federal court.<sup>20</sup>

### *Border Enforcement*

Around the same time as Wilson’s reelection campaign, the Clinton administration, following the IRCA’s provisions, began an intensive buildup of agents and control infrastructure along the border with Operations “Hold the Line,” in El Paso in 1993, and “Gatekeeper,” in San Diego in 1994. Similar programs were eventually extended along urbanized sections of the entire border. The number of US Border Patrol

agents grew from 5,900 to 25,500 between 1996 and 2010.<sup>21</sup> The Border Patrol is part of the US Customs and Border Protection (CBP) while Immigration and Customs Enforcement (ICE) is charged with investigating and apprehending unauthorized migrants in the US interior. In 2003, both agencies were folded into the Department of Homeland Security that was formed in response to the September 11 attacks. The proposed 2010 DHS budget soared to \$11.4 billion for Customs and Border Protection and \$5.7 billion for Immigration and Customs Enforcement.<sup>22</sup> New fencing and sophisticated surveillance systems have been added amid enthusiasm for increased enforcement from both Republicans and Democrats in Congress.

Apprehensions by the Border Patrol along the Southwest border increased from roughly 200,000 in 1970 to 1.6 million in 1986, when an economic crisis in Mexico and the prospect of legalization under IRCA sent unprecedented numbers of citizens north. At the beginning of concentrated border enforcement in 1993–1994, annual apprehensions were running around 1 million. They increased to 1.6 million in 2000, before declining to 541,000 in 2009.<sup>23</sup> Total national apprehensions, almost all of which were on the Southwest border, fell to 463,000 in 2010.<sup>24</sup> These data measure apprehension events, not the number of persons caught. The Pew Hispanic Center estimates that only 150,000 unauthorized immigrants from Mexico arrived annually during the period from March 2007 to March 2009, down from an annual average of 500,000 earlier in the decade.<sup>25</sup> The number of unauthorized arrivals fell to 100,000 in 2010.<sup>26</sup>

While the DHS claims that the decline in apprehensions at the border since 2000 is attributable to its increased enforcement efforts, there are reasons to be skeptical that enforcement alone is responsible for the downturn. The most notable declines were from 2007 to 2010—likely the result of job losses in US sectors such as construction, in which Mexican immigrants are overrepresented, at least as much as because of increased border enforcement.<sup>27</sup> The greatest paradox is that the border policy has bottled up unauthorized migrants in the United States once they have crossed. The Department of Homeland Security estimates that between 2000 and 2008, the number of unauthorized Mexican immigrants living in the United States grew from 4.7 to 7 million.<sup>28</sup> Unauthorized migrants are increasingly likely to stay in the United States for long periods to avoid the physical risks and high costs of multiple clandestine crossings. The probability that unauthorized migrants would return to Mexico fell from .25 to .30 per year before the IRCA, in 1986, to .10 by 1998, with most of the decline following the onset of concentrated border enforcement in 1993.<sup>29</sup>

There are two major ways of assessing the extent to which border-control policies deter unauthorized migration. The first is *immediate deterrence* at the border line that turns back attempts at illegal entry. The second is *remote deterrence* that deters potential migrants from ever deciding to leave their homes in the first place.<sup>30</sup> Between 2005 and 2010, the Center for Comparative Immigration Studies at the University of California–San Diego interviewed unauthorized migrants in three small Mexican towns and their US destinations. Depending on the community, between 24 and 47 percent were apprehended on their most recent attempt to cross the US border. Between 92 and 98 percent were able to successfully cross eventually, almost all on their first or second try. Unauthorized migrants from Tlaxiutla, Jalisco, interviewed in 2010, were more likely to be apprehended since 2000 than they had been in the past. Forty percent of unauthorized migrants were apprehended at least once in the 2002–2009 period, up from 25 percent in the late 1980s, but practically all of them succeeded eventually. These studies and others show very little evidence of effective immediate deterrence that prevents unauthorized Mexican migrants from entering the United States if they try.<sup>31</sup>

There is strong evidence that the major effect of enforcement efforts has been to unleash a series of unintended consequences. Usage of *coyotes* (smugglers) has soared. Surveys show that nine out of ten migrants now use coyotes, most of whom are contracted in the sending community to provide guaranteed door-to-door service for a set fee. Coyote fees have increased from several hundred dollars in the early 1990s to about \$2,500 in 2010. Mom-and-pop coyote operations have become sophisticated networks of operatives on both sides of the border using safe houses, tunnels, falsified papers, and other expensive ways to move clients. Journalistic reports in Mexico argue that drug gangs such as Los Zetas are charging coyotes a “*derecho de piso*” (transit tax) to use territory they control.<sup>32</sup>

The Border Patrol’s strategy of rechanneling unauthorized migration to wilderness areas has caused the deaths of thousands of clandestine migrants who face an elevated risk of dying from exposure or drowning. Immigration officials have testified that the strategy was a purposeful attempt to use the dangerous geography as a deterrent.<sup>33</sup> A 2009 report defined the death of more than five thousand persons since 1994, an average of one migrant a day, as a humanitarian crisis.<sup>34</sup> An unknown number of bodies remain lost in remote regions.

Annual surveys in Mexico and among Mexican migrants in the United States have asked respondents to rank order the factors that have most concerned them about an illegal crossing. Until 2010, natural hazards, such as extreme temperatures and the swift waters of the Rio Grande

and the All-American Canal, were the greatest fear in all three communities. In 2010, fear of gangs on the Mexican side of the border had become the principal concern, reflecting the drug violence in Mexico that has disproportionately affected Mexican border cities. In the 2010 survey, respondents in Mexico were asked if they were planning to migrate to the United States in the coming year. A multivariate regression analysis found that respondents with children and those who said that it is very dangerous to cross the border illegally were significantly less likely to plan to migrate.<sup>35</sup> To the extent that border-control policy channels illegal migrants into remote corridors where their lives are at risk—and the fact that the poor state of the US economy makes it more difficult to find family in the United States who can finance coyote fees—border control has some remote deterrent effect, even if it does not keep out those who actually try to cross clandestinely.

We expect that the level of unauthorized migration will rise from its 2010 levels when job growth in the US economy restores demand for immigrant labor and when immigrants already working in the United States are better able to afford paying the coyote fees for their family members living in Mexico. However, unauthorized migration rates are unlikely to return to their highs in the early years after 2000. In addition to the effect of US border enforcement on depressing unauthorized migration, Mexico’s declining fertility rates have fallen slightly below replacement levels. Demographers expect relatively fewer young Mexicans to reach working age in the future, thus reducing the potential supply of migrants.

### *Interior Enforcement*

Enforcement of immigration laws has been concentrated at the border since the mid-1990s. However, enforcement in the US interior began to increase again in 2002, when immigration authorities began to put into practice Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Section 287(g) made it possible for Immigration and Customs Enforcement to establish accords with state, county, and city police agencies, in which officers are trained to enforce federal immigration law. By June 2010, ICE had established seventy-one accords with police agencies in twenty-six states, certifying more than 1,130 agents. Consequently, many unauthorized migrants have been detained by subnational police after traffic stops and other minor violations, turned over to ICE, and deported. A 2010 report from the Office of the Inspector General of the DHS found that among a random

sample of immigrants arrested and identified through the 287(g) program, only 9 percent had committed the worst "level one" crimes, such as major drug offenses or violent offenses. "These results do not show that 287(g) resources have been focused on aliens who pose the greatest risk to the public," the report concluded.<sup>36</sup> Under the Secure Communities program, ICE tries to identify unauthorized immigrants once they are in jails and prisons for other offenses and then deports them to their countries of origin.<sup>37</sup>

Since 2003, the National Fugitive Operations Program has sought increased funding from Congress by emphasizing its focus on arresting dangerous illegal aliens with criminal backgrounds. Entry without inspection by itself, in contrast, is a minor criminal violation.<sup>38</sup> Yet through fiscal year 2007, nearly three-quarters of the 96,000 migrants the program detained at a cost of \$625 million did not have any criminal convictions. By 2007, only 9 percent of the migrants arrested by the program's teams had a criminal record, and 40 percent of the detainees were nonfugitives without a deportation order whom agents picked up as "collateral damage" during raids looking for someone else.<sup>39</sup>

Most unauthorized Mexican immigrants who are detained are returned to Mexico without passing through a formal legal proceeding, but formal deportation carries serious legal and social consequences, including a permanent bar to legal reentry for some felons and up to twenty years for certain other kinds of deportees, and imprisonment for subsequent illegal reentry to the United States. The 1996 Antiterrorism and Effective Death Penalty Act and 1996 Illegal Immigration Reform and Alien Responsibility Act, which were enacted in the wake of the bombing of the Oklahoma City federal building, made it easier to deport noncitizen criminals and mandated their detention until they are deported. These laws subjected noncitizens to mandatory deportation for an expanded list of "aggravated felonies," applied the harsher new standard retroactively to crimes for which punishment had already been served, and sharply restricted judicial discretion over how the law is applied.

Immigrant advocates, including Scalabrinian missionaries who run the Casa del Migrante in Tijuana that provides shelter to deportees from the United States, have found that many migrants were forced or deceived into signing "stipulated orders of removal." The US government has increasingly used these orders, in which immigrants waive their rights to a deportation hearing before an immigration judge and are quickly deported. Based on data obtained through a Freedom of Information Act request, legal researchers found that between 2004 and 2008, nearly 100,000 immigrants, 80 percent of which were Mexican, signed stipu-

lated orders of removal. The number of stipulated removal orders increased by 535 percent during that period. Ninety-three percent of the immigrants signing these orders were charged with entry without inspection and had not committed any other crimes. Only 5.5 percent were represented by an attorney.<sup>40</sup>

Deportations are having an increasingly devastating effect on families, both because of the large numbers of deportees and changes in the law that strip away judicial discretion over deportations. Before 1996, federal immigration judges almost always reviewed deportation orders for immigrants living in the United States, and judges had the discretionary authority not to deport immigrants whose removal would pose hardship for a US family member. The 1996 laws sharply curtailed judicial review and raised the standard to avoid deportation to "exceptional and extremely unusual hardship." Deportations now routinely separate US citizen children from unauthorized parents. According to a 2009 DHS report, more than 100,000 parents of US-born children were deported from the country between 1998 and 2007.<sup>41</sup> Nearly 3.3 million US-born children lived in mixed-immigration-status families with at least one unauthorized parent in 2008. An additional 1.1 million children were themselves unauthorized and thus deportable.<sup>42</sup> Immigrants brought to the United States as children have increasingly been deported to Mexico and other countries with which they have no substantive social ties.

An estimated half million unauthorized migrants have standing deportation orders and the number of deportations has continued to rise to about 400,000 a year under the Obama administration, even higher than under President George W. Bush. Of migrants who went through a formal removal process in 2009, 72 percent, or 283,000 migrants, were Mexican.<sup>43</sup> The Obama administration has trumpeted the work of ICE to defend itself from critics who accuse the federal government of failing to prevent illegal immigration.

#### *Workplace Enforcement*

Historically, most attempts to punish US employers for hiring workers without legal authorization have failed as employers have asserted their preferences for cheap, flexible labor. Perhaps most famously, the "Texas Proviso," cynically inserted by the farm lobby in the 1952 immigration act, explicitly excluded employment as a form of "harboring" illegal immigrants. A 1986 IRCA provision for the first time made knowingly hiring or continuing to employ unauthorized immigrants a federal crime.<sup>44</sup>



Employer sanctions have dropped sharply since the immediate aftermath of IRCA. The number of INS (Immigration and Naturalization Service) audits of employers per fiscal year dropped 77 percent from almost 10,000 in 1990 to less than 2,200 in 2003. Warnings to employers declined from 1,300 to 500 over the same period. The number of fines assessed for illegal hiring dropped 82 percent from nearly 1,000 in 1991 to 124 in 2003.<sup>45</sup> Changes in government recordkeeping make direct comparisons between years difficult, but despite an uptick at the end of 2010, the chances of an employer being investigated, much less fined, remain extremely small. In 2008, Immigration and Customs Enforcement carried out workplace raids resulting in 1,103 criminal arrests, mostly for harboring or knowingly hiring illegal immigrants. The raids yielded 5,184 administrative arrests of immigrants, mostly for immigration violations.<sup>46</sup> Given that there are 8.3 million unauthorized immigrants among the 154 million workers in the United States, the statistical chances of being caught in such a raid are extremely slim.<sup>47</sup>

Although the requirement that employers examine workers' legal documents was deliberately written so loosely that it is almost impossible to prosecute employers who make cursory checks, employers can still get a sense from the documents about which workers are unauthorized and thus more easily subject to retaliation. A study of union-organizing campaigns from 1998 to 1999 found that more than half of the campaigns involving unauthorized workers included employers' threats to call the Immigration and Naturalization Service on their own workers. Another study of workplace raids by the New York district office of the INS from 1997 to 1999 found that more than half of the workplaces were subject to federal or state labor agency proceedings.<sup>48</sup> From the standpoint of immigration authorities, raiding workplaces whose owners ask to be raided has the advantage of avoiding a political backlash from businesses.<sup>49</sup>

The Supreme Court's 2002 decision in *Hoffman Plastic Compounds v. NLRB* (*National Labor Relations Board*) underlines how the law post-IRCA is not deterring unauthorized immigration, but rather is making unauthorized workers more vulnerable to exploitation. The Court ruled five to four that an employer who unlawfully fires a worker for union-organizing activities is immune from ordinary labor-law liability for back pay, if the employee is an illegal immigrant whose unauthorized status was learned by the employer only after the firing. In effect, the decision limits the labor rights of unauthorized immigrants and arbitrarily rules that immigration law trumps labor law.<sup>50</sup>

IRCA also established pilot employee-verification systems in which employers voluntarily check the eligibility of potential employees with a

government database to ensure they are eligible to work legally. The pilots evolved in 2007 into the electronic employment eligibility verification program known as E-Verify. As of 2010, 238,000 private employers had registered for E-Verify, representing about 4 percent of businesses nationwide. The DHS also requires the 170,000 contractors and subcontractors for the federal government to use E-Verify for new hires if their federal contracts are worth at least \$100,000. The databases are riddled with errors, despite improvements following a scathing report by the US Government Accountability Office.<sup>51</sup>

#### *Local Enforcement*

The US federal system opens up opportunities for an extremely wide variety of responses to immigration at different levels of government. Contradictions develop within overlapping jurisdictions and across jurisdictions as different policymakers attempt to liberalize or restrict immigration. A series of Supreme Court cases settled in the 1880s around the exclusion of Chinese laborers established the "plenary power" of the federal government to have sole authority within the US federal system to control immigration.<sup>52</sup> Nevertheless, there is significant variation among states, counties, and municipalities in the way that immigrants are treated under certain kinds of law.

In 2007, a total of 1,059 immigration-related bills were proposed in subnational jurisdictions, 16 percent of which passed. Of all the bills passed, sixty expanded the rights of immigrants, twenty-six contracted their rights, twenty-four regulated their employment, thirty regulated law enforcement and criminal justice, and sixty-four served other functions. The top five states that passed immigration-related legislation were Hawaii, Texas, Arizona, California, and Colorado.<sup>53</sup> As at the national level, subnational measures are often as much about symbolic politics as practical efforts.

The most restrictive subnational law in effect in 2011 was Arizona's Senate Bill 1070, which passed in 2010 along party lines. All but one of Arizona's congressional Republicans and Republican governor Jan Brewer supported the measure in the face of uniform Democratic opposition. SB 1070 required local police to check the immigration status of anyone stopped or arrested on the basis of a "reasonable suspicion" that the person was unauthorized; the law also made it a state crime for immigrants to fail to carry proof of immigration status, and gave law enforcement authority to arrest without a warrant immigrants suspected of violating laws that would make them eligible for deportation. These strictest

parts of SB 1070 were temporarily blocked by the US Court of Appeals for the Ninth Circuit in July 2010 on the grounds that the bill appeared to violate the federal government's plenary power in immigration law.<sup>54</sup> The US Supreme Court rejected most of SB 1070's provisions in its June 2012 ruling in *Arizona v. United States*. The Court ruled that state law cannot preempt federal immigration law by being stricter, but it upheld the provision that state and local police can check the immigration status of people whom they lawfully detain, provided that in doing so police do not violate federal law.

State legislatures throughout the United States considered copying the Arizona legislation. In the absence of comprehensive immigration reform at the national level, local efforts to restrict immigration became much more common after 2000. None of these measures specifically mentioned Mexicans, but unauthorized Mexican immigrants have clearly been the target of these policies in the public discourse, prompting the Mexican government to protest laws such as SB 1070 through diplomatic channels.

### **Mexico's Policy Toward Emigrants and Migrants in Transit**

Mexico is a country of immigration, return, emigration, and transit migration, though emigration overwhelms all other movement. The nearly half a million foreign-born in Mexico in 2000 represent only 0.51 percent of the total Mexican population. This immigrant population includes many persons who were born in the United States from Mexican migrant parents. The National Migration Institute (Instituto Nacional de Migración; INAMI) has estimated that if children and those born in the United States but who reside in Mexico are deducted, the immigrant population is reduced to 295,000, or 0.3 percent of the total population.<sup>55</sup>

Mexico's emigration policy has shifted dramatically over the course of the last century. From the onset of mass emigration to the United States at the turn of the twentieth century to the beginning of the *Bracero* temporary-worker program in World War II, Mexican officials and intellectuals were generally critical of emigration.<sup>56</sup> They believed that Mexico's population was insufficient to achieve its full economic potential, particularly in the vast northern provinces. Preventing further emigration of Mexicans to the United States became central to elite understandings of national demographic health. Article 11 of the 1857 constitution, in effect until 1917, established freedom of exit and travel within the country sub-

ject to administrative restrictions in criminal and civil matters. Exit in the 1917 constitution was restricted further by reference to a separate body of migration law and Article 123, specifying that county authorities must ensure that workers emigrating abroad have signed contracts detailing wages, hours, and repatriation costs borne by the employer.<sup>57</sup>

Mexico's wartime alliance with the United States led to bilateral cooperation on migration. In 1942, the US and Mexican governments negotiated a series of agreements that ended in 1964, providing for 4.6 million *Bracero* contracts for temporary agricultural work in the United States.<sup>58</sup> Through the early 1970s, the Mexican government unsuccessfully attempted to revive the *Bracero* agreements. The US government saw little reason to resume the program so long as undocumented immigrants met US labor demand. Both governments tacitly accepted massive illegal migration. From the experience of the Mexican government, emigration appeared practically impossible to regulate. The rapidly increasing Mexican population, which rose from 19.7 million in 1940 to 48.2 million in 1970, meant serious emigration restriction was no longer needed in any case. The demographic deficit had been resolved so well that population growth was becoming a new problem. Whereas the 1947 Law of Population outlined the government's attempt to increase population through natural growth, immigration, and repatriation, its 1974 reform noted that population increases were a growing strain on the economy and state services, and the government began to successfully reduce the national fertility rate.<sup>59</sup>

As part of this effort to slow demographic growth, official policy shifted from taking "measures to prevent and avoid emigration" and finding workers who emigrated without a contract in 1947 to "restrict[ing] the emigration of nationals when the national interest demands it" and removing the penalties for leaving without a contract in 1974. In October 1974, President Luis Echeverría told President Ford that Mexico no longer sought a renewal of the *Bracero* program. The policy of *laissez-faire* continued through the 1980s, when a series of economic crises sent growing numbers of mostly unauthorized migrants north.<sup>60</sup> Without enough jobs being created each year for adolescents entering the labor force, Mexican authorities had little incentive to stem the flow. Emigration became an economic escape valve at a national level that had the added benefit of relieving pressure on the political system.

Mexico's policies toward emigrants already abroad shifted in the early 1990s. In addition to the crisis caused by the electoral fraud in the 1988 presidential elections and the Mexican government's attempts to secure passage of NAFTA, three other factors explain the emergence of

Mexico's emigration policy: the rapid growth of the Mexican population in the United States, the favorable public perception in Mexico of migrants due to the large family and collective remittances they send, and the triumph of Proposition 187 in California.<sup>61</sup>

Underlying migration patterns changed in large part because of IRCA, which accelerated a trend toward permanent settlement by legalizing 2.3 million Mexicans. The newly legalized then sponsored the immigration of their family members. A pattern of circular, mostly male migration gave way to permanent migration of whole families.<sup>62</sup> Emigrants and their resources became less accessible within Mexico, prompting the Mexican government to try to embrace them better abroad.

Mexican partisan politics spilling over into the Mexican population in the United States was the proximate cause of the policy reorientation. For the first time since the 1920s, the ruling party and competitive opposition parties vied for the favor of the Mexican population in the United States. Cuauhtémoc Cárdenas, the center-left opposition candidate for president in 1988 who, among others, later founded the Party of the Democratic Revolution (PRD), drew large crowds of Mexican migrants while campaigning in California and Chicago. Cárdenas appealed to Mexican citizens to influence the vote of their family members in Mexico and promised emigrants dual nationality and the right to vote from abroad. Emigrant rights groups, many of which were affiliated with the PRD, formed to demand a voice in Mexican politics.

The ruling Institutional Revolutionary Party (PRI) responded quickly to counter the PRD's overtures toward migrants. Most points of the Mexican political spectrum now agree, at least publicly, that Mexicans outside the country should be included somehow in Mexican political life. In his 1995–2000 National Development Plan, PRI president Ernesto Zedillo declared that “the Mexican nation extends beyond the territory contained within its borders.” These were not irredentist claims, but rather discursive moves seeking the political and economic resources of Mexicans in the United States.

The creation of a Mexican lobby in the United States became one of Mexico's primary foreign policy goals beginning with the 1993 campaign to pass NAFTA in the US Congress. The Mexican consulates also worked with Mexican American political organizations to try to defeat California's 1994 Proposition 187, which would have sharply restricted unauthorized immigrants' access to social services had the proposition not been struck down in federal court after it passed. In general, there has been little to show for the lobbying effort, in part because Mexicans in the United States tend to be quite suspicious of the Mexican government.<sup>63</sup>

Remittances have proved to be a much richer resource. The Banco de México reported that Mexico received a high of \$25 billion in remittances in 2008, though remittances fell during the ensuing economic crisis to \$21.3 billion in 2010. Remittances tend to be private, household-level transfers that can only be taxed when they circulate in the local economy. Many government agencies have tried to channel remittances toward collective projects. The Mexican government has institutionalized ties with emigrants through the Secretariat of Foreign Relations' Program for Mexican Communities Abroad (PCME) since 1990. The PCME creates formal ties between hometown associations (formed by migrants from the same community of origin) and the Mexican government at the federal, state, and county levels. These relationships are the basis for matching fund programs such as *Tres por Uno* (Three for One), in which migrants and Mexican government agencies jointly develop infrastructure projects in migrants' places of origin. By 2008, the program was spending roughly US\$125 million a year on nearly 2,500 community projects with a quarter of the funding coming directly from migrants.<sup>64</sup> Levels of collective remittances are modest overall, though they can improve the quality of life in impoverished rural areas. Most importantly, collective remittances strengthen the more diffuse hometown ties that channel the massive volume of household remittances.

Matching fund programs and other emigrant initiatives survived the change in administration from the PRI to the center-right National Action Party (PAN) in 2000. One of President Vicente Fox's first official acts in 2000 was to inaugurate a Presidential Office for Communities Abroad, directed by Juan Hernández, a dual-national literature professor born in Texas. The cabinet-level position was abolished in 2002 after conflicts with Secretary of Foreign Relations Jorge Castañeda over the management of foreign policy. In 2003, the PCME and the presidential office were folded into the new Institute for Mexicans Abroad (IME), which includes an advisory council composed of 105 Mexican community leaders and ten Latino organizations in the United States, ten special advisers, and representatives of each of the thirty-two state governments in Mexico. In 2009, the IME advisory council called for the creation of a new cabinet-level position that would coordinate Mexico's emigration policy.

Emigration control, to the very limited extent that it exists, is now implemented by the Grupo Beta police force, which first formed in Tijuana in 1990 and later expanded across the northern and southern borders. In 2000, the seventy-five Grupo Beta agents stationed on the two-thousand-mile US border arrested around 100 coyotes a month for violating the ban on human smuggling instituted in the 1996 amendments to

the General Law of Population. A debate within the Mexican government arose in June 2001 over whether Grupo Beta could forcibly prevent Mexican emigrants from crossing in the most dangerous areas. The government ultimately decided that migrants could not constitutionally be prevented from leaving, and in August 2001 Grupo Beta gave up its control functions altogether to focus on protecting undocumented migrants from bandits, conducting rescue operations, and supplying information about how to cross safely. The Secretariat of the Interior's National Migration Institute has a multimedia campaign asking citizens to report coyotes to a toll-free telephone number and to avoid crossing into the United States in dangerous wilderness areas in which hundreds of migrants die every year. In 2005, it began distributing over a million copies of an educational comic booklet for undocumented migrants with detailed tips on how to avoid the major risks of undocumented crossings by carrying water, following power lines north, and always keeping the coyote in sight.

A disclaimer on the back of the booklet summarizes the federal government's current stance toward illegal migration:

This consular protection guide does not promote the crossing of the border by Mexicans without the legal documentation required by the government of the United States. Its objective is to publicize the risks that [such crossings] imply, and to inform about the rights of migrants regardless of their legal residence.<sup>65</sup>

The right to exit in the Mexican constitution has always been subject to situational interpretations and tempered by qualifications, however, including the authorization to use coercion in the 1926 migration law. The 1974 General Law of Population requires departing labor migrants to present themselves to Mexican migration authorities, show a work contract authorized by the destination country consulate, and provide proof that they met the entry requirements of the destination country. Clearly, undocumented migrants hiking across the Arizona desert do not meet these criteria. There were no penalties for violating this article in the General Law of Population. However, Article 34 of the new Migration Law clearly states that Mexicans and foreigners can enter and exit the national territory only through the sites designated for the international transit of persons by land, sea, and air. The argument for a constitutional right of exit is a convenient way of legitimating the federal government's minimal efforts to restrict unauthorized emigration.

Since the early 1990s, Mexico has become an important country of transit migration as an increasing number of migrants, especially from

Central America, cross Mexico's southern border with the intention of reaching the United States. Since the mid-1990s, the US government has pressured Mexican authorities to stop transit migrants in Mexico. In the context of national security, after the September 11 attacks of 2001, this pressure has increased and materialized through several agreements such as Mexico's Southern Plan, the Mexico-US Border Partnership Action Plan, and the Mérida Initiative.<sup>66</sup> It has been difficult to determine the volume of this flow because it includes a significant proportion of undocumented persons. The INAMI reports that 97 percent of the 61,000 deportees from Mexico in 2011 were Central American.<sup>67</sup>

The long journey through Mexico that migrants are forced to take is plagued with human rights violations, perpetrated by criminals and police agents from different agencies including the INAMI. This process culminated in August 2010 with the murder in Tamaulipas of seventy-two migrants in transit who allegedly had been kidnapped by the Zeta drug gang thought to control the northbound smuggling route from Chiapas to the US border. Mexico's Human Rights National Commission charges that 9,758 migrants in transit were kidnapped between September 2008 and February 2009. Government officials from different levels of the administration have questioned the methodology used by the commission. Salvador Beltrán del Río, the INAMI commissioner, has written that the INAMI documented only 222 kidnapping cases in 2010.<sup>68</sup> The small number of cases documented by the INAMI is probably the result of the disincentives of undocumented persons in Mexico to report a crime, given that until November 2010, the General Law of Population required law enforcement coming into contact with unauthorized migrants for any reason to detain them. The reformed Article 67 of the General Law of Population, after November 2010, stated that attention to complaints in the area of human rights and access to law enforcement on all levels shall not be denied or restricted to foreigners, regardless of their migratory status.

The Mexican government confronts the uneasy position of demanding respect for the rights of their undocumented emigrants in the United States while failing to protect the rights of undocumented migrants who are in transit through Mexico on their way to the United States. In 2008, the Congress of Mexico reformed the General Law of Population, making undocumented migration in Mexico an administrative offense subject to a fine rather than a criminal offense subject to a prison term.

Finally, on May 25, 2011, the Migration Law was published in the *Diario Oficial de la Federación*. This new law reforms the 1974 General Law of Population and regulates the entrance and exit of Mexicans and foreigners, including migrants in transit through Mexico. Before the law

passed, it generated high expectations about the possibility of reducing the vulnerability of unauthorized migrants in transit to the United States. Although the legislation establishes “unrestricted respect for the human rights of migrants, nationals, and foreigners, whatever their origin, nationality, gender, ethnicity, age, or migratory status,” and proposes special measures to care for unauthorized unaccompanied minors, even including the authorization of a temporary humanitarian visa, the current text of the law does not offer any effective legal protection for the vast majority of migrants in transit who are undocumented given that Mexico requires visas for most Central and other Latin Americans.

The Mexican government is currently drafting the regulations to implement the 2011 Migration Law. This law includes a visa allowing international visitors in transit to enter Mexico and stay for up to 180 days—apparently a response to demands from human rights groups demanding transit visas for Central American migrants bound for the United States. However, it remains to be seen whether the new regulations supersede the 1974 General Law of Population, whose regulations deny entry to Mexico for international migrants in transit who do not have permission to enter their country of final destination.

### **A New Immigration Reform?**

Mexican president Vicente Fox made a migration accord with the United States a pillar of his foreign policy. A fundamental philosophical shift took place in the Secretariat of Foreign Relations (SRE) away from the “policy of no policy,” in which Mexican authorities long turned a blind eye to massive unauthorized migration across its northern border, to a more active stance. Mexican officials did not want to repeat their lack of involvement in US legislation like the Immigration Reform and Control Act, whose debate they did not participate in based on the premise that Mexican intervention in sovereign US policymaking would legitimate US interventions in Mexican politics.<sup>69</sup> High-level bilateral meetings in 2001, including a presidential meeting in Washington, DC, discussed a new temporary-worker program, an increase in the number of visas issued to Mexicans, and regularization of unauthorized migrants in the United States. The Fox administration in Mexico hailed these talks as the outline of a “migration accord” between Mexico and the United States, and consequently, many observers in Mexico mistakenly viewed this period as a time of “shared responsibility” for migration that was derailed only by the September 11 attacks. However, the US ambassador to Mexico at the

time, Jeffrey Davidow, has argued that in fact there was no imminent accord between Mexico and the United States because “there was not sufficient support either in the White House or in Congress for a sweeping program to legalize millions of immigrants who had come illegally to the United States.” He argues that while Mexicans insisted on calling the talks a negotiation, the Americans labeled them “conversations” or “discussions.”<sup>70</sup> After taking office in 2006, President Felipe Calderón downplayed his predecessor’s vocal expectations of a bilateral migration accord but was clearly interested in the same goal of legalized flows.

President George W. Bush announced a unilateral plan for reforming US immigration policy in 2004. Although the plan was not meant to establish an accord with Mexico, any changes in US law would disproportionately affect Mexicans. The Bush proposal eventually evolved into the Comprehensive Immigration Reform Act of 2007, which fell seven votes short of the sixty votes needed to end a Senate filibuster in June 2007. The bill would have provided a path to legalization for most of the unauthorized already living in the United States; increased spending on border enforcement; made the electronic employee eligibility verification system mandatory; increased the financial penalties on employers who hire unauthorized workers; established a new temporary-worker program; and created a Canadian-style “point system” for selecting immigrants in a way that would favor occupational skills, higher education, and English fluency. As of this writing, President Barack Obama has not been able to advance comprehensive immigration reform in the US Congress.

The politics of immigration in the United States makes for “strange political bedfellows” that cut across partisan cleavages.<sup>71</sup> In broad strokes, within the Republican Party, business interests typically support increased immigration as a source of cheap or scarce labor, while cultural conservatives tend toward restriction based on their sense that unauthorized immigrants are fundamentally lawbreakers, fears that immigrants will not assimilate, and fears that immigrants from Latin America in particular will change the ethnic makeup of the country. Democrats are often split between protectionists trying to prevent immigrant labor from competing with native workers and union leaders trying to organize immigrants already in the country. Within the business sector, interests diverge, as high-tech industries concentrate on making more H-1B visas available, while the agricultural, service, and construction sectors are more concerned with avoiding strict enforcement of immigration laws that would cut off their access to unauthorized labor.

Another split that crosses party lines is between humanitarians, who emphasize family reunification, more welcoming policies toward refugees,

and human rights concerns, versus realists, who emphasize economic concerns. Since the September 11 attacks, the security concerns of the realists, or the use of security as political cover for ideological interests, has tended to trump all other factors in the public debate. Republicans and Democrats are also trying to woo Latino voters through immigration reform as Latinos become an increasingly important sector of the electorate.

Given the ad hoc nature of coalitions on immigration reform and the grand compromises necessary to create even the possibility of a politically viable bill, supporters have tended to tepidly support such measures, whereas opponents of particular features—particularly legalization or “amnesty”—have been adamantly opposed and have effectively harassed talk radio, the Internet, and television commentary to squelch reform efforts using the many “veto points” of the US political system, such as the Senate filibuster. The complexity of immigration reform is deepened even further by the inherently cross-border nature of international migration in a global system of sovereign states, where migrant source countries like Mexico have struggled to define and advance their own interests.

### Final Considerations

We argue that the United States and Mexico should include the following principles and features in their immigration policies:

- A path to legalization and eventual citizenship should be opened for the vast majority of the estimated 11.2 million unauthorized migrants in the United States, beginning with the 1 million unauthorized children.<sup>72</sup> A clean criminal record, at least one year of residence, and payment of a modest fine for adjustment of status are legitimate requirements. However, requiring unauthorized migrants to physically leave the United States and then reenter legally serves no pragmatic purpose and will create unnecessary expenses and depress participation among migrants otherwise eligible to legalize their status.

- Migration from Mexico to the United States is primarily driven by US labor demand. Therefore, enforcement efforts should focus on fining US employers who knowingly hire unauthorized immigrants. To minimize the risk of discrimination against Latinos or foreigners legally eligible to work, significant funds should be devoted to upgrading the E-Verify database and establishing mechanisms for authorized workers to quickly resolve questions about their legal status without prejudice to their employment.

- The US economy demands a range of high-skilled and low-skilled labor. On the supply side, many potential migrants do not wish to settle permanently in the United States, but do want to work there temporarily. Existing temporary-worker programs should be revamped and dramatically expanded to admit separate quotas of workers within different brackets of educational attainment. The quotas should be adjusted annually to respond to economic conditions in different sectors of the economy. Issuing portable visas to workers, rather than employers, would allow labor markets to allocate labor far more efficiently than the government and prevent unscrupulous employers from exploiting workers legally tied to a single workplace.

- A unilateral US policy embedded in an existing multilateral agreement protecting migrant workers' rights is likely to be more efficient than a bilateral accord between the United States and Mexico. Historical experience suggests it is unlikely that a bilateral treaty with Mexico would lead to effective supervision of migrant workers' rights by the Mexican authorities, and such a policy would indirectly discriminate against potential migrants from other countries. As an alternative, the United States should sign the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and give legal temporary workers the same labor rights as natives. Temporary workers with a history of employment and a clean criminal record should be able to renew their visas and be eligible for legal permanent residency after five years. It must be recognized that many temporary workers will eventually decide to stay permanently, even if a temporary stay was their original intent.

- The 1921–1965 national origins quota system has long been discredited as racist, yet the vestiges of a nationality-specific system remain in the per-country limits for employment and family preferences. Through the 1970s, US presidents supported a continuation of special consideration for Mexico and Canada given their status as friendly neighbors with long migratory and economic ties to the United States. At the same time, Mexico is not alone as a country with some kind of “special relationship” with the United States, or with a much higher demand for immigrant visas than the current supply. The per-country limit of 25,620 immigrant visas for nonimmediate family members and workers should be eliminated and replaced with a global quota that does not have a differential impact on particular nationalities.

- Efforts to fortify the US-Mexico border should be reduced, given the high cost in lives of unauthorized crossers, the tremendous expense of the effort, and its limited efficacy.

• Federal savings from reducing border enforcement should be used to fund the employer sanctions program and reimburse local and state governments that are adversely affected by the fiscal costs of highly concentrated immigration in domains such as health care, education, and criminal justice. Government provision of free English-language education to immigrants would help immigrants better integrate into the United States and more than pay for itself in the long run as immigrants with better English-language skills would earn higher taxable incomes. The deportation of noncitizens who have committed serious crimes is in the legitimate interest of the US government. However, the pre-1996 status quo ante of due process, judicial review, and humanitarian considerations encouraging family unification should be restored to the removal process.

• The governments of the United States and Mexico should put transit migration through Mexico on the bilateral agenda. This is a problem that pertains to both countries. In effect, the US border has been externalized throughout Mexican territory given that the Mexican government is detaining unauthorized migrants bound for the United States. Mexico has the obligation to protect the human rights of transit migrants in spite of the pressure imposed by the United States to stop them in Mexico.

• In addition to being a country of emigration, return, immigration, and transit, Mexico should also be recognized as a country of deportees. The United States is not only deporting a large number of persons who were captured crossing the border, but also undocumented people who have resided in the United States for long periods and who have therefore weakened their ties with their communities of origin. Deportees require a formal government policy in Mexico that offers them opportunities to reintegrate into the home country.

Given the high US demand for Mexican labor, the maturity of the social networks linking particular Mexican communities of origin and US destinations, and a culture of emigration and dependence on remittances in many parts of Mexico, a legal immigration system that does not make significantly more room for Mexican immigrants is almost guaranteed to result in massive, unauthorized migration. Many migrants would prefer to come as temporary workers, and a well-designed program could channel much of that demand into legal temporary migration. Scholars recognize that much temporary migration becomes permanent, and policies should recognize that reality by providing some regular means of status adjustment to avoid creating a large permanent underclass of noncitizens. Governments choose whether to design policies allowing for safe, orderly immigration. Those policies will not end the challenges surrounding

unauthorized migration, but they can manage them more humanely and pragmatically.

## Notes

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18. US DHS, *Immigration Enforcement Actions: 2009*.

19. Passel, *Unauthorized Migrants*, 3.
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# 7

## Protecting the Environment?

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The current era of global environmental problems is forcing societies to redefine their relationship with nature. Debate over climate change has raised awareness of these issues at international, national, and subnational levels. Until recently, environmental exploitation has been regarded merely as a consequence of economic, physical, and demographic growth. The resulting problems have mainly been defined as technical, an approach that avoids and evades direct consideration of underlying socioeconomic and political forces. In Mexico and the United States, among other countries, the operational model for environmental analysis favors fragmented perspectives on complex and interrelated problems.

We place our discussion within this broad context. Environmental protection and natural resource management have become significant elements of the bilateral relationship over the past thirty years. Challenges now shaping the agenda for cooperation are formidable, and they engage a rich and diverse set of institutions and stakeholders at multiple levels of government in both societies.

We begin the chapter with an overview of major environmental issues and their potential implications for the US-Mexican relationship in the short and long terms. We then analyze binational efforts to manage environmental issues and provide a critical perspective on their strengths and shortcomings. We conclude with policy recommendations.