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# COMMENT

## A LESSON FROM MY GRANDFATHER, THE BRACERO

*LORENZO A. ALVARADO†\**

My grandfather's life as a Bracero was not that much different than anyone else's. My grandfather, Agustin Partida, was born and raised in Yurecuaro, Michoacan, a tiny agricultural village in central Mexico. He grew up extremely poor. He, his father and brothers were peon laborers. My grandfather started working "like a man" at age eight. He helped his father pick tomatoes, chili peppers, and corn on the local farms. The family rarely went hungry, but their daily diet consisted exclusively of corn tortillas and beans as they could afford nothing more. My grandfather did not get his first pair of shoes until he was a teenager. Seeing the struggles of his father and mother made him hope to someday provide for them and a family of his own. But, with peon pay barely enough to survive, he knew his options in Yurecuaro were limited.

That was when a temporary agricultural worker program (better known as the "Bracero" Program) came to Yurecuaro. Bracero recruiters arrived in his hometown in 1944 and began signing up eager men and boys to go work in "El Norte," where it was rumored that work was bountiful and the pay unmatched. Because these temporary agricultural contract workers worked with their arms, they were given the name "Braceros" - derived from the Spanish word "brazos," which means "arms." Too young to sign up himself, my grandfather watched two of his older brothers become some of the first to go north. His brothers were contracted to work in Kelseyville, a tiny agricultural com-

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\* This is dedicated to Agustin Partida - my grandfather, my hero, and the most influential man in my life. His life inspired this article. This article is only a small gesture of my immense love for him. I thank him for sharing with me his knowledge, experience, love, and zest for life. Thank you, "Grandpa."

munity in northern California (where my grandfather would eventually settle and the area where I was born and raised). My grandfather followed his brothers to Kelseyville as an illegal alien in the early 1950s, but returned frequently to his hometown.

My grandfather's first experience as a Bracero was in 1955. After signing up with the Bracero recruiter in his hometown, he was sent to Empalme in the state of Sonora. Once there, he paid a nominal fee for a "bracero card" which entitled him to a Bracero contract if selected by a grower. At the Empalme recruitment center, applicants stood in line for grower inspection. Growers selected those they felt were better fit for agricultural work, that is, the bigger and stronger applicants. My grandfather is only slightly taller than five feet and at the time weighed no more than 130 pounds, so he was consistently passed over by growers during the inspections. After numerous rejections during inspection, my grandfather was finally asked by a grower if he was interested in picking peaches. My grandfather, eager to make money, jumped at the opportunity. The first Bracero contract he signed was to pick peaches for forty-five days in Marysville, California. My grandfather worked for the duration of the contract and subsequently returned to Mexico.

Soon after getting married, my grandfather signed up for another contract in 1958, this time picking watermelons and onions in Phoenix, Arizona. Once the harvests ended, my grandfather was offered work as a cook's assistant at a local labor camp. He worked there for the remainder of his contract and promptly returned to Mexico. However, his employer liked the way he worked and gave him a "special card," which allowed him to resign a new contract as soon as he returned to Mexico - instead of having to wait for another grower to select him at a recruitment center. Because my grandfather was a loyal hard worker, his employer allowed him to renew contracts for a total of 18 months. My grandfather worked hard and saved enough money to send to his wife and children for food and, occasionally, clothes. He would have continued working in Phoenix indefinitely, but his mother died, forcing him to break his contract and return home in late 1959. Because he broke his contract, by law, he was never again allowed to sign up as a Bracero.

Although my grandfather returned to the U.S. with a permanent resident visa in late 1960, the Bracero Program left an indelible mark on his life. In search of a better life, he traveled thousands of miles away from his family to work the agricultural fields of a foreign country. My grandfather, now living in Yurecuaro again, says the toughest part of being a Bracero was leaving his wife and infant children for months at a time. He also

recalls other tough times as a Bracero. He remembers working eight to ten hour days in one-hundred degree heat, seven days a week. He remembers getting paid only 70 cents an hour. He remembers other Braceros broke their legs, ribs, or arms when they fell out of tree branches they climbed while picking peaches. He remembers hearing from other Braceros about how they had been robbed of wages at their previous job and were either afraid to complain or did not know who to complain to. As my grandfather's story illustrates, the life of the Bracero was difficult.<sup>1</sup>

## I. PURPOSE

The Bracero Program was in effect from 1942 to 1964. Currently, there is a proposal in Congress to create a new temporary foreign agricultural worker program similar to the Bracero Program. The purpose of this paper is to advocate for the rejection of the current proposal. It is my contention that importing temporary agricultural workers has negative effects on both the U.S. and Mexican workers involved. The importation of temporary contract workers was not successful decades ago and will not be so today either. In order to present a complete evaluation of the negative effects of the importation of contract workers, one needs to look at the past, that is, at the Bracero program of the mid-20<sup>th</sup> Century and the lessons it gave us.

## II. THE BRACERO PROGRAM AND ITS FLAWS

America's military involvement in World War II created a wide-scale labor shortage, especially in the agricultural sector. Agribusiness claimed a lack of adequate numbers of agricultural laborers due to flight to higher-paying industrial jobs generated by the war.<sup>2</sup> In 1941, Southwestern growers requested U.S. government permission to import Mexicans to cultivate and harvest crops. At first, all such requests were denied by the U.S. government.<sup>3</sup> However, complete U.S. involvement in military affairs after Pearl Harbor and the continuous flight of laborers from agricultural to industrial jobs put a drain on the growers' labor supply by early 1942.<sup>4</sup> The U.S. began informal negotiations with Mexico in April 1942 to secure a temporary contract laborer

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1. Telephone interview with Agustin Partida (October 30, 2000).

2. KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 19 (1992).

3. ERASMO GAMBOA, *MEXICAN LABOR AND WORLD WAR II: BRACEROS IN THE PACIFIC NORTHWEST 1942-47* 39 (1990); CALAVITA, *supra* note 2 at 19.

4. ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* 43 (1964).

agreement to offset *wartime* labor shortages.<sup>5</sup> It was emphasized that all that was needed were *temporary* workers. As a representative of the Agricultural Labor Bureau of San Joaquín phrased it, “[T]he class of labor we want is the kind we can send home when we get through with them.”<sup>6</sup> A committee comprised of the Immigration and Naturalization Service, the Departments of Justice, Labor, State and Agriculture, and the War Manpower Commission drafted the temporary worker program. On April 4, 1942, the two countries informally entered the bilateral agreement upon which the wartime Bracero Program was based.<sup>7</sup> Congressional authorization of the agreement came on April 29, 1943, with the enactment of Public Law 45 (“PL 45”).<sup>8</sup>

PL 45 was the only agreement, formal or informal, negotiated at a time when the U.S. did not have substantial bargaining power over Mexico.<sup>9</sup> The Mexican bargaining leverage due to the wartime labor shortage was evident in the basic and additional requirements set forth in the agreement. The basic requirements set forth in PL 45, as required by Mexico, were uncontroversial and remained substantially intact for the duration of the Bracero program. The basic requirements were as follows. First, recruitment would be based on a written labor contract. Second, the Bracero program would be administered jointly by both governments and contract compliance would be guaranteed by the same. Third, recruitment would be based on need for laborers so that Braceros would not displace domestic workers and lower existing wages. Fourth, the employers or the U.S. government would pay for transportation and subsistence costs between the recruitment centers in Mexico and the workplace.<sup>10</sup> Finally, Mexican contract workers were required to return to Mexico after their contract expired, which was anywhere from one to six months from the start date.<sup>11</sup> These “basics” were not significantly modified during the twenty-two-year Bracero program.

Additional requirements also demonstrated Mexico’s early bargaining advantage. The agreement provided Braceros with some labor guarantees not available to domestic workers under U.S. law, like minimum or prevailing wages and employment

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5. RICHARD B. CRAIG, *THE BRACERO PROGRAM: INTEREST GROUPS AND FOREIGN POLICY* 39-40 (1971); CALAVITA, *supra* note 2 at 19.

6. GALARZA, *supra* note 4, at 55.

7. CALAVITA, *supra* note 2, at 19.

8. *THE BORDER THAT JOINS* 81 (Peter G. Brown & Henry Shue, eds., 1983).

9. *Id.* at 57-60; CRAIG, *supra* note 5, at 43-45.

10. *THE BORDER THAT JOINS*, *supra* note 8, at 60; GALARZA, *supra* note 4, at 47.

11. *THE BORDER THAT JOINS*, *supra* note 8, at 60; GALARZA, *supra* note 4, at 178-79.

hours.<sup>12</sup> The agreement provided that Mexico could keep Braceros from being sent to communities where Mexicans experienced racial discrimination.<sup>13</sup> In fact, Mexico unilaterally declared that Texas would not be allowed to recruit Braceros because of that state's discriminatory history.<sup>14</sup> The U.S. government, to the dismay of growers, acceded to Mexico's demands. But as we shall see, the Mexican bargaining position quickly eroded, as did Mexico's negotiating victories. After PL 45 expired, one by one, each of these requirements was either discarded or disregarded.<sup>15</sup> Thus, from the outset, the Mexican authorities sought to protect the Bracero, while the U.S. only paid lip service to that position.<sup>16</sup>

At the end of World War II and until 1964, agribusiness claimed that a labor shortage continued to exist and thus PL 45 should be extended. The claim that a labor shortage existed after the war is contentious at best, as evidenced by the Department of State's notification to Mexico in November 1946, that within ninety days the U.S. would no longer need Mexican war workers.<sup>17</sup> Yet, because of grower pressure, PL 45 was extended until the end of 1947 by Public Law 40 (PL 40), passed on April 28, 1947.<sup>18</sup> The extension added provisions that signaled the demise of the Mexican bargaining position. The extension agreement now allowed Texas to recruit Braceros, which was an explicit violation of the terms Mexico had negotiated four years earlier. The basic provisions of PL 45, however, were kept alive formally and informally under various agreements and extensions until 1964. The Bracero Program, initially used as a solution to the temporary labor shortage caused by World War II, was extended for over two decades.

#### A. *How the Bracero Program Operated*

Throughout its twenty-two-year history, the Bracero program operated in the following way:

Growers and/or grower associations determined their labor needs. Growers estimated the number of Braceros needed to fulfill their labor requirements and the length of time they would be needed. Braceros were to be requested only if there were not

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12. THE BORDER THAT JOINS, *supra* note 8, at 60; CALAVITA, *supra* note 2, at 19.

13. GALARZA, *supra* note 4, at 50.

14. THE BORDER THAT JOINS, *supra* note 8, at 60.

15. *Id.* at 56-73.

16. ERNESTO GALARZA, STRANGERS IN OUR FIELDS, 10 (2nd ed. 1956).

17. THE BORDER THAT JOINS, *supra* note 8, at 81; GALARZA, *supra* note 4, at 48.

18. CALAVITA, *supra* note 2, at 25.

enough domestic workers willing to perform the work for the wages offered by growers. Next, federal agencies, usually under the umbrella of the Department of Labor ("DOL"), certified the number of Braceros needed, the duration of employment, wages to be paid, the crops to be harvested, and housing. All of these requirements, as we shall see later, were not adequately enforced. DOL granted certification, and a "request" for Braceros from the Mexican recruitment centers was made.<sup>19</sup>

On the Mexican side, Bracero applicants were screened and accepted at recruitment centers by federal agencies like the Secretaria de Relaciones Exteriores, Secretaria de Gobernación, and the Secretaria del Trabajo y Previsión Social.<sup>20</sup> Recruitment centers were originally located in the interior of Mexico, but later, as demanded by growers, were relocated closer to the border in Hermosillo, Chihuahua, Empalme and Monterey.<sup>21</sup> At the recruitment centers, representatives from the DOL's Employment Service acted as agents for employers in selecting those they thought fit for agricultural work.<sup>22</sup> Those "lucky" Bracero candidates selected were sent to reception centers on the U.S. side.

Once the Braceros were transferred to the U.S. reception centers and inspected by U.S. health officials, they were selected by employers and/or grower associations.<sup>23</sup> The chosen Braceros were then shipped to their work sites. Transportation and subsistence costs to and from the reception/recruitment centers were to be borne by either the federal government or the growers themselves, depending on whether or not there was a government-to-government agreement in place. According to the binational agreements, Braceros were to be paid the prevailing wage in the community as determined by DOL wage surveys, without depressing that wage by their presence. Most importantly, Braceros were allowed only if there was a certified labor shortage in the area. At the expiration of their contract, Braceros were required to return to Mexico immediately.

## B. *Problems*

### 1. *Lack of U.S. Government Control*

At first, employers were reluctant to hire Braceros. Illegal laborers were more appealing because growers were not required by contract to provide any housing, wage, and hour guarantees.

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19. CRAIG, *supra* note 5, at 132-37; GAMBOA, *supra* note 3, at 50-52.

20. THE BORDER THAT JOINS, *supra* note 8, at 56.

21. *Id.* at 67; GALARZA, *supra* note 4, at 52.

22. THE BORDER THAT JOINS, *supra* note 8, at 56.

23. *Id.*

That changed once the Immigration & Naturalization Service (“INS”) cracked down on illegals in the late 1940s and 1950s. The INS on its own, without sanction or approval of the DOL, began to intensify the persecution and deportation of illegal aliens to make the Bracero a more attractive source of labor.<sup>24</sup> Year after year, starting in 1944, a record number of illegals were deported. 1954 was the peak year with an astonishing 1,089,583 deportees.<sup>25</sup> Eleven years earlier, in 1943, only 11,715 illegals were deported. With fewer illegals to hire, employers sought Braceros.<sup>26</sup>

In addition, the contractual status between Bracero and employer gained appeal because the Bracero was contractually obligated to work for a specified time, resolving the problem of illegals deserting their work if they found better wages elsewhere.<sup>27</sup> The Braceros became an ideal labor force for employers – controlled by contract and obligated to work during harvest time and to leave immediately after. As a result, Bracero popularity soared, with their numbers surpassing 300,000 for the first time in 1954 and never again dropping below that level until 1961, when “only” 291,420 Braceros were admitted.<sup>28</sup> Thus, with substantial encouragement from the INS, outside the control of the DOL, employers began to embrace the Bracero program.

## 2. *Lax Enforcement of Contract Guarantees*

Despite the seemingly significant basic guarantees of PL 45 and its progeny, the lackadaisical enforcement by U.S. officials and disregard by employers left Braceros unable to reap those benefits. Employers often simply ignored contract provisions they found inconvenient: workers were not always paid the minimum thirty cents per hour, their hours were not always correctly recorded, their payments were delayed, and housing and food did not meet the contract’s minimum standards.<sup>29</sup>

Few complaints were brought forth by Braceros and, of those, even fewer were given a remedy.<sup>30</sup> While conducting a report for the Joint United States – Mexico Trade Union Committee, Ernesto Galarza noted that none of the Braceros knew the name or address of the Secretary of Labor, with whom they should file their complaints. Galarza also found that, with only

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24. CALAVITA, *supra* note 2, at 52-56; CRAIG, *supra* note 5, at 127-31; GALARZA, *supra* note 4, at 58-61.

25. CALAVITA, *supra* note 2, at 55 and 217.

26. *Id.* at 54-55.

27. GALARZA, *supra* note 4, at 58.

28. CALAVITA, *supra* note 2, at 218; CRAIG, *supra* note 5, at 180-81.

29. CALAVITA, *supra* note 2, at 24.

30. GALARZA, *supra* note 4, at 197-98; GALARZA, *supra* note 16, at 62-74.

two compliance officers in Arizona and thirteen in California, grower abuses were nearly impossible to detect. Braceros did not complain to the Mexican Consul for fear that they would no longer be given contracts or that their current ones would not be renewed.<sup>31</sup> Thus, lack of DOL enforcement of Bracero grievances left the worker without the protections guaranteed by contract.

Another problem was the DOL's failure to determine labor necessities adequately, which depressed wages. Certification of a grower's request for workers was given after a DOL determination that there were not enough domestic workers willing to work at the existing wages and that Braceros were needed to shore up the purported labor shortage.<sup>32</sup> With Braceros willing to work at lower wages, growers, especially those who were members of associations, kept wages so low that domestic workers were unwilling and unable to accept them. In this manner, employers could create their own supposed labor shortage and make requests for Braceros to fill this "void."<sup>33</sup> Growers requested a surplus of Braceros who were willing to work at "prevailing" wages that domestic workers were unwilling to accept.

Despite contract guarantees that they be paid the prevailing wage, many Braceros were significantly underpaid.<sup>34</sup> Bracero earnings in the Santa Clara Valley of California fell below \$2.00 a day.<sup>35</sup> Other Braceros earned twenty-five dollars a week in gross earnings, but after deductions for room and board, were left with eighty cents take-home pay.<sup>36</sup> Moreover, lack of work due to employer overestimation of labor needs further decreased Bracero take-home pay. In an effort to harvest crops as quickly as possible, growers requested a surplus of Braceros by overestimating their labor needs (the DOL did not adequately verify the validity of these labor needs when issuing certification) and put them to work in rotations.<sup>37</sup> Consequently, Braceros worked fewer hours than guaranteed under their contract. Fewer hours meant even less take-home pay.

Grower overestimation of Bracero needs also led to violation of contract guarantees of minimum work hours. Growers consistently overestimated their needs for temporary labor in an effort to harvest their crops as quickly as possible thereby ensur-

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31. GALARZA, *supra* note 16, at 62-67.

32. GALARZA, *supra* note 4, at 134.

33. *Id.* at 129-34.

34. CALAVITA, *supra* note 2, at 24 and 29; GALARZA, *supra* note 4, at 184-187; GALARZA, *supra* note 16, at 39.

35. GALARZA, *supra* note 4, at 185.

36. GALARZA, *supra* note 16, at 37.

37. GALARZA, *supra* note 4, at 183-86.

ing the best prices in the market. Braceros were brought in earlier than necessary to ensure that workers would be available as soon as harvesting began. This led to periods of idleness before and after harvesting periods. For example, Braceros would be contracted for six months, yet work only two. This was a clear violation of Bracero contract guarantees that Braceros would work three-fourths of the workdays of the contract period.<sup>38</sup> Despite the contract guarantees, their inadequate enforcement led to significant loss of hours which, coupled with depressed wages, led to lost guaranteed earnings.

Still other abuses of contract guarantees by employers went unchecked. Some employers made illegal deductions from Bracero paychecks for their transportation to and from the nearby towns, despite contractual guarantees of free transport.<sup>39</sup> Employers also charged additional insurance premiums to purportedly provide medical attention to Braceros. Under certain employers, these insurance premium deductions alone amounted to twelve percent of net earnings.<sup>40</sup> However, the insurance was null without medical clinics in neighboring towns or when growers did not transport Braceros to those clinics unless they felt the injury required medical attention.<sup>41</sup> Deductions for food were standard; however, most Braceros felt they did not get their money's worth, because the food was subpar or even spoiled.<sup>42</sup> Incredibly, some employers deducted Bracero paychecks for use of blankets.<sup>43</sup> In addition, growers falsely recorded the number of hours worked, thereby cheating Braceros out of their earnings.<sup>44</sup> There was even physical abuse of Braceros by employers and their foremen.<sup>45</sup> Thus, not only were contract guarantees disregarded; Braceros were also often exposed to inhumane treatment.

Housing was another area where Braceros suffered. Growers were required by contract to provide housing, but some growers bought discarded barracks and tents from army surplus stores for Bracero housing. Other employers converted barns, stables, warehouses and abandoned garages into Bracero labor camps.<sup>46</sup> The housing conditions were deplorable. In fact, the Director of

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38. *Id.* at 176-77.

39. *Id.* at 187.

40. *Id.* at 190.

41. GALARZA, *supra* note 4, at 189; GALARZA, *supra* note 16, at 57-58.

42. GALARZA, *supra* note 4, at 188; GALARZA, *supra* note 16, at 40-41; GAMBOA, *supra* note 3, at 98-105.

43. GALARZA, *supra* note 4, at 186.

44. GALARZA, *supra* note 4, at 192-193; GALARZA, *supra* note 16, at 48-49; GAMBOA, *supra* note 3, at 54.

45. GALARZA, *supra* note 4, at 197.

46. GALARZA, *supra* note 4, at 194-195; GAMBOA, *supra* note 3, at 93-96.

the Bureau of Employment Security concluded in the early 1950s that many camps were not fit for people to live in. Historian Ernesto Galarza argues that because ramshackle housing was one of the most visible defects of the Bracero program, it was more readily corrected by employers. While most housing conditions were eventually improved, these improvements did not begin until 1956, after over a decade of horrible housing conditions.<sup>47</sup>

Other evidence of the lack of adequate enforcement and/or policing by the DOL was the illegal retention of Braceros. The INS and its parent agency, the Department of Justice, consistently worked without the DOL's authority to help growers control their Bracero workforce. The INS unilaterally created the I-100 card system in 1954, which circumvented the Bracero program rule that Braceros could not be re-contracted for employment for a period of time after their initial contract expired. If a Bracero was deemed to be a hard-working, complacent worker by the employer, he was issued an I-100 card by the INS at the employer's request. With the I-100 card, the Bracero could be immediately re-contracted from the recruitment center for more work, without having to wait a set time period before getting a new contract. The I-100 card gave employers even more leverage over Braceros, because the workers were encouraged to be good, loyal and hard-working in order to earn the "free pass" back to a labor contract.<sup>48</sup> This made Braceros reluctant to complain about employer abuses for fear of being denied an I-100 card. The DOL opposed the INS's unilateral creation of the I-100 card system but did not succeed in dissolving the system until three years after its enactment.<sup>49</sup>

### 3. *Negative Effects on Domestic Workers*

Domestic agricultural workers also suffered wage injustices due to inadequate enforcement of Bracero contract guarantees. With the influx of Braceros willing to work at lower wages, domestic workers were forced to accept those lower prevailing wages. For example, in Imperial County, California, the introduction of Braceros lowered the prevailing wage from one dollar to seventy cents an hour for domestic workers.<sup>50</sup> Wage depression was widespread.<sup>51</sup> Despite contractual guarantees that Braceros would not be allowed into areas where their presence

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47. GALARZA, *supra* note 4, at 195.

48. CALAVITA, *supra* note 2, at 88-94.

49. *Id.* at 114-15.

50. GALARZA, *supra* note 4, at 139.

51. LINDA C. MAJKA & THEO J. MAJKA, FARMWORKERS, AGRIBUSINESS, AND THE STATE 141 (1982); GALARZA, *supra* note 4, at 205-08.

would depress the prevailing wage, DOL officials consistently failed to detect Bracero-induced wage depression. The purported prevailing wage in the community was submitted by the employer, but DOL wage surveys were not conducted until *after* the Braceros had already begun working there.<sup>52</sup> The DOL wage surveys erred on the side of growers because the prevailing wage was depressed by the introduction of Braceros before DOL officials could discover the discrepancy. Thus, domestic workers were forced to accept significantly lower wages than they would have had Braceros not been introduced or had DOL officials adequately enforced the Bracero program guarantees.

The surplus of Braceros diminished work opportunities and hours for domestic workers as well.<sup>53</sup> Initially, the Bracero was to be a supplemental worker. That is, the Bracero was to be brought in only if there was a scarcity of domestic laborers. With 309,033 to 445,197 Braceros admitted into the U.S. each year from 1954-1960, the Bracero began dominating agricultural labor.<sup>54</sup> In 1960, for example, Braceros harvested over eighty percent of tomatoes, lettuce, and lemons grown in California<sup>55</sup> and over half the state's asparagus, melon, and strawberry crops the same year.<sup>56</sup>

Domestic workers lost job opportunities as Braceros were hired in their place. Some domestics were dismissed outright as soon as Braceros arrived.<sup>57</sup> Employers advertised for domestic workers at low wages, knowing that few would accept. In this way, they created a manipulated and artificial need for labor. Those domestics who did find work were forced to accept lower wages.<sup>58</sup> Furthermore, the use of Braceros undermined domestic labor efforts to organize unions and strike for better conditions.<sup>59</sup> Thus, domestic agricultural workers were forced to work for paltry wages, inadequate hours, and in adverse conditions not present before the Bracero Program.

Housing for domestic workers was even worse than for Braceros. In California, for example, the Farm Placement Service observed in 1956 that there was a serious shortage of housing for domestic workers. While the barracks-style housing was arguably suitable for the lonely Bracero worker, it was hardly

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52. GALARZA, *supra* note 4, at 144-45.

53. MAJKA, *supra* note 51, at 153-54.

54. CALAVITA, *supra* note 2, at 141 and 218; GALARZA, *supra* note 4, at 156-58.

55. RALPH J. WOOLPERT, *THE HELPING ARM: THE BRACERO IN CALIFORNIA AGRICULTURE* 23 (1966).

56. *Id.*

57. GALARZA, *supra* note 4, at 203-04; GALARZA, *supra* note 16, at 8.

58. MAJKA, *supra* note 51, at 142.

59. CRAIG, *supra* note 5, at 91; GALARZA, *supra* note 4, at 203-204; MAJKA, *supra* note 51, at 138 and 142.

adequate for domestic workers and their families. Moreover, as the number of Braceros increased, available housing for domestics decreased. In fact, in a Salinas Valley camp, resident families were asked to move to make way for Braceros.<sup>60</sup> Braceros were guaranteed housing by contract, but domestics were not. Family housing for domestic workers was displaced by barracks for the unaccompanied male Braceros.

Like the Braceros, domestic workers were blacklisted by employers if they were not subservient. In California, the State Department of Employment (“DOE”) kept records on domestic farm laborers. Growers reported domestic workers that they deemed to be unreliable, lazy, or troublemakers to the DOE. The DOE compiled profiles of domestic workers based on the grower reports. A prospective domestic employee would not be referred to an agricultural job if he or she had a history of unsatisfactory referral.<sup>61</sup> Like the Bracero, it was in the domestic worker’s best interest to not complain about employer abuses. Thus, the Bracero Program proved detrimental to both domestic agricultural workers and to the Braceros themselves. Although it should be conceded that some Braceros did benefit because they were provided employment that they otherwise would not have had in Mexico, the overall effects of the program were negative with respect to most workers – foreign and domestic. Such unreasonable wages, living conditions, and other abuses amounted to human rights violations. And now, there is a proposal in the U.S. Congress that seeks to bring the Bracero Program back again. Will history repeat itself?

### III. DO WE NEED A NEW BRACERO PROGRAM?

#### A. *The Current Situation in U.S. Agriculture*

The current situation in U.S. agriculture indicates conclusively that there is no need to hire temporary foreign workers. The U.S. General Accounting Office (“GAO”) in 1997 found that most agricultural counties had double-digit unemployment rates, some of which were twice the national unemployment rate. The GAO also reported that there was no impending labor shortage in these areas.<sup>62</sup> According to DOL statistics for 1997, sixty percent of farmworkers lived below the poverty line. This proportion increased from fifty percent in 1990.<sup>63</sup> Farmworker wages have stagnated and have been out-paced by cost-of-living

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60. GALARZA, *supra* note 4, at 212-13.

61. *Id.* at 162.

62. Dan L. Burk, *Analysis of Pombo H-2C Guestworker Proposal, H.R. 4548* (July 2000) <<http://www.fjustice.org>>.

63. *A Profile of U.S. Farmworkers*, U.S. Department of Labor, 1997.

expenses. Today, the U.S. is not engaged in a war that has drained the labor pool the way it did back in the early 1940s. Thus, the justification for creating a temporary worker program is even less compelling today than when the Bracero Program was originally implemented nearly six decades ago. There is a surplus of cheap agricultural laborers already in place in the U.S. There is no agricultural labor problem to resolve. There is therefore no need for a new temporary worker program.

### B. *Congressional Proposal for a New Temporary Worker Program*

Congressman Richard Pombo from the 11<sup>th</sup> District in California, an area consisting of the agriculturally inclined Central Valley, introduced on May 25, 2000 a bill that would essentially revive the Bracero Program.<sup>64</sup> Pombo's bill, H.R. 4548, calls for the creation of a national registry system of U.S. workers under the direction of the DOL. Each state would have a registry cataloging the names of domestic agricultural workers, permanent resident aliens, and temporary foreign legal workers known as H-2A workers who are available for employment.<sup>65</sup> Workers seeking agricultural work would be encouraged to register for placement in a pool of potential laborers from which employers can fill their labor needs. Potential workers would disclose their name, address, period of time they are willing to work, qualifications and experience, and type of agricultural work they are willing to perform. Employers would submit to the registry the amount of workers they need, the type of work involved, wage, hours, and beginning and ending dates. The DOL would then match up employees with employers based on the criteria submitted by both groups and, *voilà*, the agricultural labor problem would be resolved.

### C. *Will History Repeat Itself?*

It is my contention that H.R. 4548 will not work smoothly, if at all. The bill seeks to amend Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act,<sup>66</sup> by adding a new type of temporary foreign worker – the H-2C worker. The H-2C worker is similar to the H-2A in that both are temporary agricultural work-

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64. H.R. 4548, 106th Cong. (2000).

65. An H-2A worker is a foreign guestworker that is requested by agricultural employers when there are not enough domestic workers to hire. H-2A's are temporary workers who must engage in agricultural work for a specified period and then return to their native country. H-2A workers are protected under the Immigration and Nationality Act (8 U.S.C. §1101) and thus are given numerous protections like guaranteed housing and wages.

66. 8 U.S.C. 1101(a)(15)(H)(ii)

ers to be imported into the U.S. at the request of employers who claim to be experiencing a labor shortage. The H-2C worker, however, is more appealing for several reasons. First, employers would not be required to provide housing. Instead they could merely provide housing vouchers and force H-2C workers to find housing on their own in a tight housing market. Second, employers who request H-2A workers are required to offer the opportunity to work at least three-fourths of the workdays in the stated period of employment, whereas with H-2C workers no such guarantee is required. Most importantly, H.R. 4548 streamlines and legitimizes the ability of employers to hire foreign temporary workers, i.e. the H-2C workers, by a mere finding that not enough *registered* workers are available to work under the terms and conditions set by the employers. The provisions of H.R. 4548 seem perfectly devised on paper, but as with the Bracero program, in practice it is doomed to fail to yield the proposed results when not adequately enforced.

The proposed bill is self-serving by giving itself the name, "The Agricultural Opportunities Act," thus implying that the purpose of this legislation is to give "opportunities" in agriculture to Mexican workers. In reality, H.R. 4548 is strongly backed by agricultural employers.<sup>67</sup> Employer claims that there are insufficient workers in the U.S. to meet their needs are untenable when DOL statistics reveal double-digit unemployment rates in agricultural areas. If approved, the bill may realize the same history of PL 45. H.R. 4548 calls for the program to last for three years. This seems quite similar to the PL 45 timetable, which was subsequently extended formally and informally for an additional two decades. The potential for this to happen again is real.

H.R. 4548 calls for protection of wages, but much like the original Bracero Program, it is unlikely that the wage protection will be adequately enforced. The bill orders that H-2C workers will not adversely affect the prevailing wage in the state of employment and under no circumstances will be paid less than state or federal minimum wage, whichever is greater.<sup>68</sup> But, much like the flawed wage surveys conducted by the DOL back in the Bracero era, the determination of the actual prevailing rate is subject to error. There are no guidelines set by the bill that outline when and how the wage surveys will be conducted. This opens the door to the possibility once again, as in the Bracero era, of DOL wage surveys conducted *after* the H-2C workers have arrived and depressed the prevailing wage. Incredibly,

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67. Letter from National Latino Summit Against Guestworker Legislation to U.S. House of Representatives (July 26, 2000).

68. H.R. 4548, 106th Cong. § 201(c)(3) (2000).

under H.R. 4548, the DOL may accept an employer conducted wage survey as a substitute for its own.<sup>69</sup> This would undoubtedly lead unscrupulous employers to provide surveys that falsely present a lower prevailing wage. Wage protection for H-2C and domestic workers would therefore be nonexistent.

Although the proposed bill provides minimum wage guarantees, the lack of policing power by the DOL will invariably allow employers to deviate from such requirements. There simply are not enough compliance officers to ensure that the minimum wage is paid by employers. For example, a recent Los Angeles Times article pointed out that in 1999, there were only nineteen state Division of Labor Standards Enforcement officers to ensure that the over one million farm laborers in California are receiving the minimum wage.<sup>70</sup> The enforcement officers found only eleven wage violations. While some may see this as evidence that employers are policing themselves, it seems more indicative of a lack of adequate enforcement. In fact, the article interviewed an enforcement officer who said that growers know when the enforcement officers are in the area, and an agricultural worker stated that contractors would tell workers that the "labor commissioner [was] coming" and then the employers would take care of things for a while.<sup>71</sup> One enforcement officer claimed the current enforcement of minimum wage standards is "a joke."<sup>72</sup> Because of these enforcement inadequacies, even the minimum wage is not guaranteed. Furthermore, there are no clauses in the bill that call for the creation of an additional enforcement agency nor any increase in funding for current state enforcement agencies. This shows that the minimum wage guarantees are not as great a protection as H.R. 4548 would make them seem. Thus, as in the Bracero era, there are no guarantees that workers, domestic and foreign, will get their legally earned wages if H.R. 4548 passes.

There is the additional danger that DOL officials will mistakenly facilitate the ability of employers to request surplus H-2C workers. Section 203(b)(1)<sup>73</sup> provides that if the employer has not received a DOL referral of sufficient domestic workers from the registry seven days before the date on which the work is anticipated to begin, then the employer can submit an application for H-2C workers directly to the Secretary of State. Under Section 203(b)(2), the Secretary of State shall, in conjunction with

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69. H.R. 4548, 106th Cong. § 204 (a)(3) (2000).

70. James Rainey, *Opposite Views Arise on Farm Labor Fines*, LOS ANGELES TIMES, April 19, 2000.

71. *Id.*

72. *Id.*

73. H.R. 4548, 106th Cong. § 203(b)(1) (2000).

the Attorney General, admit the number of H-2C workers requested by the employer. There is the danger, therefore, that the DOL will not issue such a referral or that the employer will not receive it on time and thus open a loophole for employers to get immediate access to H-2C workers.

Moreover, Section 101(b)(8)<sup>74</sup> calls for the DOL to remove from the registry any worker who has been referred for employment but has refused to accept such employment or does not report in a timely manner on three occasions. This clause does not account for the possibility that domestic workers may refuse employment due to unacceptable terms of the employer. The net effect would be removal of domestic workers from the registry, thereby decreasing the pool of potential domestic workers. A diminished labor pool, due to incompetent enforcement by the DOL, would allow employers to request unnecessary H-2C workers. In addition, Section 101(b)(10)<sup>75</sup> calls for the removal of a U.S. worker's name who has not accepted employment in the preceding twelve months and thereby diminishes the domestic labor pool even further. Thus, provisions within the bill itself would decrease the number of available registered domestic workers and open the door to a harmful surplus of foreign labor.

Even without the assistance of DOL incompetence and H.R. 4548's beneficial provisions, employers can help their own cause in getting a surplus of H-2C workers. Under Section 203(c)(1)(a),<sup>76</sup> an employer can make a request for redetermination of its labor needs if U.S. workers "abandon employment or are terminated for a lawful job-related reason." An employer can impose impossible or trying conditions that would force an employee to abandon. Lack of adequate policing make it difficult to determine whether an employer terminates a worker for a lawful, job-related reason. By requesting a redetermination of need due to this "unexpected" loss of workers, the employer may be more likely to get H-2C workers to replace their "lost" workforce.

Another provision that employers can manipulate to acquire foreign workers is the "emergency application" clause. Section 203(d)(2)<sup>77</sup> provides that the DOL may provide notice to the Attorney General and the Secretary of State of a need for H-2C workers for emergencies. One such "emergency" is when an employer "faces an unforeseen need for workers (Section 203(d)(2))." The scenario where an employer could take advan-

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74. H.R. 4548, 106th Cong. § 101(b)(8) (2000).

75. H.R. 4548, 106th Cong. § 101(b)(10) (2000).

76. H.R. 4548, 106th Cong. § 203(c)(1)(a) (2000).

77. H.R. 4548, 106th Cong. § 203(d)(2) (2000).

tage of this provision to receive H-2C workers would be as follows: An employer might have a need for two hundred workers, yet make a request for only one hundred workers. The employer can subsequently declare an “unforeseen emergency” and by this emergency application clause, get H-2C workers by immediate request to the DOL. By this simple action, there would be a surplus of one hundred contract bound H-2C workers keeping wages down and negatively competing with U.S. agricultural workers. While it is likely that the bill proponents would argue that the DOL could adequately determine if the unforeseen emergency was legitimate, the consistent inadequacy of DOL enforcement would make that unlikely.

The bill claims to protect workers, but that is not the case. Section 301(d)(1)<sup>78</sup> would create the “Commission on Housing Migrant Workers” to study the problem of in-season housing for migrant farmworkers. This provision seems beneficial in that its purported aim is to uncover agricultural housing problems. The problem is that this Commission is not required to report its findings until three years after the enactment of the bill, which happens to be the duration of the entire bill. So one must ask, what is the point of doing a study on housing problems if the study will not be completed until after the H-2C worker program is supposed to end? Shouldn’t this study on housing be done before the program is enacted? Or, is it that H.R. 4548 is expected to last longer than the three years proposed by Congressman Pombo? Could it be that its proponents are envisioning a temporary worker program that, like PL 45, is kept alive for over two decades?

The bill also seeks to conduct studies on field sanitation, labor standards enforcement, and child labor. Yet these studies as well are not due until the H-2C worker program would purportedly end. There appears to be no point to these studies unless the H-2C worker program is expected to last longer than its three-year timetable. Moreover, just because the bill calls for studies and a commission does not mean the problems uncovered will be resolved.

Certain provisions in the bill will likely lead to a system of employer control of H-2C workers reminiscent of the I-100 card system of the Bracero era. As shown above, Braceros were kept in check by the issuance and non-issuance of I-100 cards; those workers that employers liked were given cards and thus a free pass back into a Bracero contract, while those that were not complacent or “didn’t work hard enough” were not given the oppor-

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78. H.R. 4548, 106th Cong. § 301(d)(1) (2000).

tunity to return. Section 218(a)(3)<sup>79</sup> provides that any H-2C worker who abandons a contracted job can be reported by the employer and will be subsequently deported by the Attorney General. More importantly, Section 218(a)(3)(e)<sup>80</sup> provides that the employer can “replace an alien who abandons or prematurely terminates employment.” This allows for a scenario where an employer may have H-2C workers whom he deems hardworking, obedient and complacent, but whose contracts have run out and have returned to Mexico. Upon the arrival of a new group of H-2C workers, the employer may pressure those newcomers he does not approve of, forcing them to abandon the job by imposing harsh conditions and/or low pay. Once those workers are forced to abandon, the employer will report them and be allowed to hand-pick replacement H-2C workers. He will likely choose those workers who are hardworking and obedient. No doubt prospective workers in Mexico will find out about the “preferential” treatment given to hard working, obedient, and complacent workers, and will strive to be the same. H-2C workers will work hard and not complain about any injustices visited upon them to ensure that they will get another contract. The need to make money for themselves and their families will keep the H-2C worker from voicing complaints.

There are other assurances and provisions that on paper seem to benefit foreign and domestic workers. Section 201(c)(5)<sup>81</sup> requires that registered employers comply with all applicable federal, state, and local labor laws affecting U.S. and foreign workers. But, there is no grievance or compliance system set up to handle any complaints by workers. Section 301(a)<sup>82</sup> merely states that the DOL “shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer’s failure to meet” such conditions. Nowhere in the proposed bill is there any indication of how a complaint or grievance regarding a wage claim, for example, will be brought forth and resolved. There is no indication that the H-2C workers will be informed about the grievance procedure once it is set up. There is no indication that the grievance procedures will be conducted in Spanish or in any other form to facilitate foreign worker complaints. There were similar assurances in the original Bracero Program, but history has shown us that those guarantees were many times disregarded. Few complained and, like my grandfather, most did not know to whom to complain and feared

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79. H.R. 4548, 106th Cong. § 218(a)(3) (2000).

80. H.R. 4548, 106th Cong. § 218(a)(3)(e) (2000).

81. H.R. 4548, 106th Cong. § 201(c)(5) (2000).

82. H.R. 4548, 106th Cong. § 301(a) (2000).

their grievances would not be addressed anyway. H.R. 4548 is set up so that history will repeat itself.

#### IV. CONCLUSION

There are two main reasons why H.R. 4548 should not be adopted. First and foremost, the basic premise for the proposal is wrong – there is no agricultural labor shortage. We are not now engaged in a war causing a sudden downturn in agricultural labor supply. Unemployment rates in agricultural counties are the highest in the nation. There is a surplus of workers to fill the jobs. The problem is employers who refuse to raise wages to the levels where U.S. farmworkers can earn a living. Statistics have shown the increasing proportion of agricultural workers and their families in poverty.

The second reason that H.R. 4548 should not be adopted is that its guarantees to workers, domestic and foreign, are not likely to be adequately enforced. The Bracero Program had many assurances similar to those in the present-day bill, but they were null when DOL officials failed to adequately police employers. Employers were able to set lower wages with the introduction of foreign labor in the Bracero era. They can do so again with H.R. 4548. Employers controlled the numbers and the livelihood of Braceros. Employers will likely control H-2C workers in the same way. Many Braceros lacked the ability to properly complain when their contract guarantees were violated, and still others kept quiet in order to keep their jobs. As I have argued, this will likely happen again.

Thus, there is no *need* for a temporary worker program, and the risks associated with its implementation necessitate its rejection. This is the lesson that should be learned from my grandfather's life as a Bracero.

