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Determinants and Impact of US Immigration Policy toward Mexico since the 1980s

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Table of Contents

Introduction	1
Chapter 1: US Immigration Policy Determinants	6
Chapter 2: Impact of Non-Border Enforcement Immigration Policy	17
Chapter 3: Impact of Border Enforcement and Detainment Policy	29
Conclusion	40

Introduction

The US-Mexican border is not your ordinary boundary-marker between two nations: it is the world's longest border between a developed and developing nation. Mexico has historically been plagued by poverty, lack of employment opportunities and unequal distribution of wealth, while the US has long maintained its status as the world's wealthiest nation. There are vivid signs of the socio-economic and cultural divide between the US and Mexico at any of the populated regions along the 1,969 mile (3,140 kilometers) border.

In light of the approximately 12 million unauthorized persons currently residing within US borders, it's no wonder why immigration policy typically stands at or near the forefront of the nation's political agenda. Although it's an issue that has receives great attention from policymakers and the general public, due to failed attempts to formulate a comprehensive immigration policy in step with the economical and social realities on both sides of the US –Mexico, the immigration debate is raging now as much as ever.

Since the Immigration Reform and Control Act (IRCA) was passed by Congress in 1986, the US has not technically lacked a comprehensive policy as much as it has failed to formulate or effectively enforce a logical policy. The number of unauthorized immigrants in the US has been growing steadily for over a decade, and its uniquely high growth rate is evident, as it drastically outgrew estimates based on the 2000 Census report.¹ The US government's approach to the issue of immigration has changed only in the amount of money spent on border enforcement, yet very little in its reasonability and efficacy. The IRCA, Immigration Act of 1990, Illegal Immigration Reform and

¹ Passel, Jeffrey S. "The Size and Characteristics of the Unauthorized Migrant Population in the US," p. 2 (Pew Hispanic Center, March 7, 2006) <http://pewhispanic.org/files/reports/61.pdf>

Immigrant Responsibility Act of 1996 (IIRIRA) , and border enforcement operations of the 1990s build the framework of modern US immigration policymaking, with the post-9/11 era having taken on its own identity as the threat of terrorism is used to justify border militarization.

This report seeks to address two main questions: first, who and what are the determining factors forces driving the formulation of US immigration policy since the implementation of the IRCA in 1986? Second, what impact has US policy had on flows of Mexican migrants to the US, and on the immigrants themselves? The principle argument is that US immigration policy is formulated with powers given to a Congress that historically acts in accordance with the domestic political climate. Those dynamics have resulted in a unilateral approach to immigration policymaking on the US side, defined by years of ad-hoc legislation designed more to calm the public's nerves and win votes than actually address the root causes of unregulated inflows of documented and undocumented immigrants. Furthermore, the tendency of the US to focus almost all of its resources on militarizing and enhancing border enforcement efforts has resulted in a dangerous environment for border-crossers, while giving way to human smuggling and drug organizations. Lost in recent US efforts is a focus on internal enforcement, visa and naturalization reform, temporary worker programs, and a binational solution to regulating migration.

The first chapter focuses on the most significant factors that determine US immigration policy. This discussion includes political-party cleavages and their respective constituencies, because as previously noted, immigration policy is very much determined by interest groups, public sentiment and a Congress that primarily acts

according to the domestic climate. This has been most apparent when the immigration debate has peaked around the time of executive and congressional elections, when talks have often stunted during the legislative process largely due to election-time interests.

Another key point of discussion is state and local-level actors, which have played an increasingly significant role in immigration policymaking due to the federal government's inability to pass effective, comprehensive legislation. State and local leaders are held accountable by voters in their respective regions, and in order to secure reelection many have taken on an active role in immigration control, often overstepping the boundary between state and federal authorities.

And a fourth consideration is the extent to which the Mexican government is a player in determining US policy. Overall US-Mexico relations took drastic turns toward an increasingly bilateral and friendly relationship during the promotion of the North American Free Trade Agreement (NAFTA) in the early 1990s, and Mexico's simultaneous establishment of a legitimate multi-party system with free and fair elections. Despite increasingly friendly overall relations, Mexico's inability to dictate its will in the immigration debate has been clearly visible since the IRCA. And at a moment that once seemed a great opportunity, the 9/11 attacks served to greatly distract the US away from its regional interests and slow the tremendous immigration reform many had predicted in Washington.

The second chapter focuses on the impact of the IRCA and various major US policy-measures taken since 1986. This discussion pays close attention to the Immigration Act of 1990, Illegal Immigration Reform and Responsibility Act of 1996 (IIRIRA), 1996 Welfare Reform Act, post-9/11 era of anti-terrorism legislation, and

state-level immigration policy. While the impact of specific Border Patrol (BP) and border enforcement policies will be analyzed in great detail in chapter three, this section pays close attention to the ramifications of non-border policies and internal enforcement. This includes the US visa system, temporary-worker programs, family reunification, amnesty packages, employer sanctions, and anti-immigrant legislation on the federal and state-levels limiting access to public services.

The third chapter examines the impact that US policies have had on regulating immigration flows from Mexico, as well as its effect on the rise of human trafficking and coyotes and migrant deaths along the border. The 1990s saw the US alter the BP's strategies while simultaneously stepping up funding and enforcement tactics. Major points of consideration during this era of militarization and border buildup are El Paso's Operation Hold the Line (HTL) and subsequent similar operations along the southern border such as Operation Gatekeeper, the Arizona Border Control Initiative (ABC), Secure Border Initiative and Secure Fence Act. While many lauded these efforts to fortify the southern border as a success, the results are based on apprehension statistics that most experts confess are difficult to interpret due to inaccuracies and lack of reliable figures on unauthorized immigrants.

What's not debatable is the impact these measures have had on the Mexican immigrant: with US border enforcement increasingly visible, immigrants have taken increasingly dangerous alternate routes to reach US soil. Among the negative consequences of US border enforcement strategies throughout the 1990s and 2000s are that migrant deaths have increased, human smuggling organizations have risen to prominence, organized crime has surged, while human rights organizations have

continually expressed grave concern over the state of the southern border and impact of US border enforcement efforts.

US immigration policy and US – Mexican relations in general are often rooted in the difficult task of balancing sovereignty and morality.² Sovereignty is at the heart of any nation's right and obligation to secure its borders and protect its citizens. Morality, in the case of migration, is multi-faceted: it's a factor in issues such as family reunification policy, detention, amnesty, the impact of border enforcement and how to treat immigrants once they are inside the country. As the longstanding hegemonic power of the Americas, the need for the US to invoke its sovereignty with a sense of morality is critical in order to achieve a policy of benefit to both nations.

² Weintraub, Sidney. *A Marriage of Convenience: Relations Between Mexico and the United States*, p. 180 (Oxford University Press, 1990)

Chapter 1: US Immigration Policy Determinants

US-Mexican Relations since the 1980s

Since the 1980s, the extent to which Congress has given room for the Mexican government to influence immigration talks in Washington has mirrored the modern history of overall US-Mexico relations. Most academics and experts argue that the US-Mexico relations have gone through three distinct phases during this time period: the 1980s were the back-end of a long stage often referred to as *laissez faire* or *benign neglect*.³ Decisions were made unilaterally and even when Mexico was invited to give input at immigration hearings - such as when Congress initially formulated the IRCA in 1982 – no weight was placed on Mexico’s desires. There was little effort from either side to improve relations or recognize the desires of the neighboring countries.

By the early-to-mid 1990s, a new era of *crisis management* was ushered in, just in time for the US and Mexico to promote passage of the NAFTA.⁴ The always-controversial issue of US immigration policy was intentionally avoided by both parties during NAFTA talks, but a desire to pass the free trade agreement by both Mexican President Carlos Salinas and the US administrations of President George H.W. Bush and then Bill Clinton resulted in a friendlier and more bilateral tone. The transition toward a relationship of dialogue over dictation or benign neglect continued as Mexico’s government became increasingly intertwined economically with the US and Canada.

The third and short-lived phase marked by *bilateralism* emerged with PAN presidential nominee Vicente Fox’s ascension to Mexico’s top office in 2000, which

³ Dominguez, Jorge and Fernandez de Castro, Rafael. *Between Partnership and Conflict: The United States and Mexico*, p. 11 (Routledge, 2001)

⁴ Durand, Jorge. “From Traitors to Heroes: 100 Years of Mexican Migration Policies.” (Migration Policy Institute, 2004) www.migrationinfomrtaion.org

coincided with George W. Bush's presidential election in the US.⁵ Fox marked a new era in Mexican politics and was thus eager to forge a positive relationship with the US, while Bush spent many years of his personal and professional life in Mexico and claimed to have personal interest in forming policy that would benefit both nations. He paid his first presidential visit abroad to San Cristobal, Mexico, in February, 2001. There, the two newly inaugurated presidents spoke about a new and improved relationship, and observers seemed optimistic it would include reforming migration policy.⁶ That optimism proved to be false hope when US foreign policy interests were sidetracked and became entirely focused on Afghanistan and later Iraq.

The "War on Terror" changed the face of Washington politics. The question of immigration regularization is being determined in a climate of *post-9/11 politics*, and since 9/11 the Bush Doctrine justified much of US policy along the border. Perhaps more often than ever before, the effort to "regain control of the borders" is being called for by segments of the general US public. And despite the distraction of the ongoing two-front war, immigration was near the top of the Congressional agenda in 2006, when many, massive reform packages failed to pass through Congress. Those discussions were not in any way described as a legitimate display of bilateralism. Rather, they acted according to US domestic concerns – specifically, US national security and appeasing an outwardly displeased public. Since current Mexican President Felipe Calderon's victory in the 2006 election, he has called for immigration reform on many occasions and expressed "deep concern" over the failed US reform attempts that occurred the same year

⁵ Ibid

⁶ King, John. "Bush, Fox Begin US – Mexican Summit." (CNN, February 16, 2001)
<http://archives.cnn.com/2001/ALLPOLITICS/02/16/bush.mexico/>

as his inauguration.⁷ However, since the 9/11 attacks there has been no reason to believe the US has any motivation to invite in bilateral immigration discussions akin to what was spoke by the early Fox and Bush administrations.

Congress and the Executive

Historically, US immigration policy has been rooted in Congressional interests, while the executive branch has generally refrained from playing a dominant role in the debate except for certain times. Those are either periods of extreme public outrage or when the US and Mexican leaders have had personal stake in the debate, such as what was mentioned under Fox and Bush. Despite Congress leading the way, in all instances the executive branch plays a role: first, the president may speak publically and privately on reform packages while they are still in Congress, and second, reserves the right of final approval or veto of that passes Congress.⁸ While these have always been the executive branches' primary roles in immigration policymaking and are important factors in any instance, more will be said on the role of the executive branch at a later point in this chapter.

Congress generally formulates policy in response to the domestic political climate, and in the case of immigration this holds true.⁹ The state of the economy and need for migrant labor, lobbying efforts by interest groups to Congressional members,

⁷ Hanson, Stephanie. "Straight Talk on Immigration," in the Council on Foreign Relations' *Daily Analysis* (Council on Foreign Relations, 3/15/2007) www.cfr.org

⁸ Leiden, Warren. "The Role of Interest Groups in Policy Formation," in the *Washington Law Review*, 70:715 (The University of Washington, 1995)

⁹ Rosenblum, Marc. "Immigration Policy: U.S.-Mexican Relations Confront U.S. Political Realities," in *Contemporary Cases in US Foreign Policy*, p. 238 (Congressional Quarterly, forthcoming 2008)

and the collective voice of the US public are three of the most influential factors in determining the amount of governmental attention paid to reforming immigration policy.

Interest groups are wide-ranging and promote both pro-immigrant and anti-immigrant policy, and emanate both domestically and internationally. Despite anti-immigrant groups often landing on the front page headlines more often than their counterparts – largely due to their sometimes extremist voice - pro-immigrant groups such as those representing the agricultural and service industries have often steered policymakers with the greatest amount of influence.¹⁰ That can be largely credited to immigrant communities' vast contribution to the US economy. Although this fact is hotly debated in many circles, much evidence does show that immigrants have a positive impact maintaining the US economy and providing much needed labor in certain industries.¹¹ Yet while that may be true, it is critical to note that no matter how much immigrant communities contribute, at least some native groups will be negatively affected, thus mobilizing anti-immigrant interest groups. In fact, surges in immigration historically trigger native backlashes in the receiving areas most impacted, and their interests are often responded to by federal, state and local legislators.¹²

There is ample evidence that interest groups are the dominant influence on immigration policymakers. Restrictions to immigration are consistently higher in areas where lobbying efforts are dominated by labor unions, and lower in areas where business

¹⁰ Rosenblum, Marc. "U.S.-Mexican Migration Cooperation: Obstacles and Opportunities," from the *Proceedings of the 2006 Conference on Migration, Trade, and Development*, p. 13 (Published online by the Federal Reserve Bank of Dallas, 2006) <http://www.dallasfed.org/research/pubs/migration/rosenblum.pdf>

¹¹ Griswold, Dan. "Mexican Migration, Legalization and Assimilation," at the *Civitas Forum on Reconsidering Immigration and Citizenship in the 21st Century* (Published online by the Center for Trade Policy Studies, October 5, 2005) www.freetrade.org

¹² Money, Jeanette. "No Vacancy: The Political Geography of Immigration Control in Advanced Industrial Countries," in *International Organization*, vol. 5: p. 685-720 (Cambridge University Press, 1997)

interests are of greatest importance.¹³ The result of lobbying efforts is a Congress that has tried to meet drastically varying demands, thus dividing the debate into numerous factions. US party cleavages have often dictated the potential passage or failure of immigration bills at the congressional level, as well as the type of proposed policy reforms. However, the Congressional immigration discussions of 2006 illustrated how partisanship does not determine the outcome of the immigration debate with as much consistency as it does other issues on Capital Hill.

One instance in which this can be seen was the various failed reform packages that were hotly contested in Washington in 2006, a time which saw both partisan-politics and divisions *within* political parties. Those attempts at massive reform saw the likes of current Republican presidential nominee and then Arizona Senator John McCain crossing party lines to work hand-in-hand with Massachusetts' Democratic Senator Edward Kennedy. The two coauthored the "McCain-Kennedy" bill, which failed in Congress due primarily due to opposition from the right, as well as smaller segments of the left.¹⁴ Interest group lobbying efforts determine the types of demands placed on policymakers, but their agenda's are born from varying viewpoints that relate to many different societal issues, including converging economical, cultural, moral and religious demands.¹⁵

Mexican and Mexican-American interest groups have become increasingly mobilized in recent years, and logically, they tend to promote pro-immigrant reform. Mobilization is largely a response to the rise of hard-liners in the anti-immigrant

¹³ Facchini, Giovanni; Mayda, Anna Maria; Mishra, Prachi. "Do Interest Groups Affect Immigration?" discussion paper from the Institute for the Study of Labor (IZA, November, 2007) <http://ftp.iza.org/dp3183.pdf>

¹⁴ Rosenblum, Marc. "Immigration Policy: U.S.-Mexican Relations Confront U.S. Political Realities," in *Contemporary Cases in US Foreign Policy*, p. 242 (Congressional Quarterly, forthcoming 2008)

¹⁵ Rosenblum, Marc. *The Transnational Politics of US Immigration Policy*, p. 32 (Center for Comparative Immigration Studies at the University of California, San Diego, 2004)

movement, as many communities have seen a surge in hate-crimes, worksite raids, arrests, and general hostile treatment of Mexican immigrants.¹⁶ Organizations such as Mexicans Without Borders - which strives to attain permanent residency for all undocumented immigrants residing in the US and establish legal channels for future waves – are working to advance the cause of the Mexican immigrant from both amnesty and humanitarian standpoints.¹⁷ It is groups stemming from these institutions and forces that generally influence the debate from a human rights aspect. This list includes Mexican, Mexican-American, non-governmental and specific human rights organizations such as Amnesty International.

A study of the Houston, Texas and Chicago, Illinois metropolitan areas showed the main forces behind pro-immigrant mobilization are non-state institutions such as the Catholic Church and community organizations, both of which have a strong presence in Mexican and Mexican-American communities.¹⁸ And as the rapidly growing Hispanic population mobilizes in the US, the group has received much attention for its value as a voting bloc. Hispanics historically support democratic candidates, although current President Bush received a Republican record 40 percent of the Hispanic vote in the 2004 presidential election.¹⁹ In any case, the growing political and economical impact of the Hispanic community, combined with the emergence of many new Hispanic communities

¹⁶ Selenas, Maria Elena. "Mexico Welcomes Home Returning Migrants," in the *Arizona Daily Star* (Arizona Daily Star, 12/25/2007) www.azstarnet.com

¹⁷ Cardenas, Maria. "Mexicans without Borders leader Maria Cardenas' interview with *S&L Magazine* (S&L Magazine, May, 2005) www.socialismandliberation.org

¹⁸ Cano, Gustavo. "The Chicago-Houston Report: Political Mobilization of Mexican Immigrants in American Cities," prepared for the *Research Seminar in US-Mexican Relations*, p. 7 (Center for US-Mexican Studies, October 30, 2002) <http://repositories.cdlib.org/usmex/cano>

¹⁹ Whitesides, John; Mason, Jeff. "Obama, McCain Spar Over Immigration," from *Reuters* (Reuters Press, June 28, 2008) <http://www.reuters.com>

throughout the country, are causing politicians across the board to walk a fine line trying to satisfy anti-immigrant and pro-immigrant constituencies.

Other pro-immigrant lobbying efforts typically emanate from the business sector, particularly the industries which rely heavily on a strong labor force and unskilled workers. The agricultural, meat, and service industries' lobbying efforts all have a tremendous effect on the decisions of immigration policymakers. Their efforts are valuable because as representatives of from the private sector, they usually have the most money and therefore carry the most weight. The groups are not as concerned with human rights conditions as much as the "bottom line," but in a capitalistic society such as the US, wealthy lobbying groups will generally yield the most influence. They are seeking less restrictions, an open-gateway for immigrant workers to arrive in the US, and policy that would enable employers to avoid sanctions.

Leading the effort on the other side of the debate are labor unions. Unions are fairly well-financed through membership fees and have a great deal of political influence due to the potential support from their large membership bases, which is always desirous come election time. However, the greater the lobbying efforts, the higher union membership fees rise, which doesn't go over well during difficult economic times. This brings to light a critical difference between anti and pro-immigrant actors: although the anti-immigrant forces often receive the most attention, its pro-immigration forces that often have the most successful lobbying efforts due to their deep pockets.

Other anti-immigrant groups promoting stricter enforcement can be found among mobilized populations in areas most affected by immigrants. This includes groups such as the Minutemen, founded by Jim Gilchrist, a newspaper reporter from an area 50 miles

north of San Diego, California. Gilchrist has attracted a massive following that not only fights for stricter immigration regulation in Washington, but is notorious for physically guarding border areas not patrolled by federal authorities. Most of the actors that come from this pool can be classified as hard-liners and occasionally extremists. Their real-life impact on policymakers is limited due to poor funding and lack of a cohesive agenda. A 2006 audit showed the Minutemen took in 418,000 US Dollars (USD), but spent 449,493 USD, during which time many unsatisfied members broke away from the group and formed their own organizations, such as the Patriots Border Alliance.²⁰ Not only is this evidence of poor funding, but divisions such as are exemplary of the wide array of pressures on Congress.

The general public sentiment is also a powerful force in forcing immigration reform onto the political agenda, but is also a force in determining the complex divides that uniquely define the immigration debate compared to other issues that break precisely down along party-lines. Numerous polls and studies attest to the US public's often poor image of Mexican immigrants and concern about immigration policy.²¹ Thus, there is always a sense of urgency to "do something" about border security and immigration control.

One effect the general public can have is to motivate the president to become active in reform talks. During high-times of executive interest in immigration policymaking, presidential desires have typically been delivered in the form of political rhetoric and speech acts. However, as previously mentioned, the executive does play a

²⁰ Scarpinato, Daniel. "Minutemen Founder Besieged from Within," in the *Arizona Daily Star* (Arizona Daily Star, December, 23, 2007) www.azstarnet.com

²¹ Belanger, Maryann; Espenshade, Thomas J. "Immigration and Public Opinion," in *Crossings: Mexican Immigration in Interdisciplinary Perspectives*, p. 368 (Harvard University, 1998)

significant role in either promoting or diffusing policy proposals during the legislative stages, and also either approves or vetoes laws once they have passed through Congress. These roles should not be understated: presidents can strongly influence a divided Congress to vote a certain way by testifying at congressional hearings and establishing immigration task forces and commissions, such as the hugely important US Commission on Immigration Reform.²² Moreover, presidents generally show increased interest in immigration policy leading up to major reform packages, which was evident under President Ronald Reagan leading up to the IRCA, as well as when George W. Bush entered office in 2000 and during the 2006 failed reform package debates in Congress.²³

One other instance in which a president plays a significant role in immigration is when they have a legitimate personal interest in the issue. This was on display in 2000, when Bush and Vicente Fox entered office in the US and Mexico, respectively. While Bush had served as Governor of Texas, Fox was the first PAN nominee to reach the highest office in Mexico, snapping a streak of more than an 80 consecutive years during which time Mexico was under the rule of the Institutional Revolutionary Party (PRI). Like Bush, Fox often spoke about change and hope of an improved future. However, these efforts were largely derailed following the 9/11 attacks in New York and Washington. And even though Bush claimed to have a personal interest in immigration reform, when the issue resurfaced on the Congressional agenda in 2006, the US leader was blamed by many for not committing enough resources and relying on Congress to

²² Rosenblum, Marc. *The Transnational Politics of US Immigration Policy*, p. 24 (Center for Comparative Immigration Studies at the University of California, San Diego, 2004)

²³ Kernell, Samuel. *Going Public: New Strategies of Presidential Leadership* (Congressional Quarterly Press, 1997)

determine the proposals.²⁴ Undoubtedly, immigration policymaking is driven by Congress with the president playing only a secondary role, which typically has shown deference to the former.

State-Level and Local-Level Policymaking

In recent years state-level actors have been passing legislation at unprecedented rates, a phenomenon that roots from states and localities that feel the federal government has failed to address border control and respond to unauthorized immigration. As of April, 2007, all 50 states were considering immigration-related bills, and the amount of such bills considered in the first quarter of 2007 doubled the amount in the first quarter of 2006. While not all the bills are overtly anti-immigrant, most of them can be defined as such. Moreover, it's in local areas that are historically the least affected by immigration where the most aggressive restrictions have been proposed, suggesting new waves of immigrants relocating to new regions has had a negative effect on state and local sentiments.²⁵

These sweeping attempts to institute reform are a reaction to the inaction of federal powers: the inaction of Congress has given the responsibility and power of immigration regulation back to state and local-level actors.²⁶ This includes the infamous Proposition 187 and likeminded legislation that has passed through the pipeline in recent years. States such as California, Texas, Illinois, Florida and New York are hit hard by

²⁴ Rosenblum, Marc. "Immigration Policy: U.S.-Mexican Relations Confront U.S. Political Realities," in *Contemporary Cases in US Foreign Policy*, p. 237 (Congressional Quarterly, forthcoming 2008)

²⁵ Audrey, Singer. "Statement of Dr. Audrey Singer before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law," at the hearing on the *Impact of Immigration on States and Localities* (May 17, 2007) www.brookings.org

²⁶ Boulard, Garry. "Immigration - Left to the States," in *State Legislatures*, p. 15 (October/November, 2006) www.ncls.org

waves of immigrants, and specific to Mexican immigration, the list includes Arizona and New Mexico.²⁷ It's in these areas where since the 1990s we have seen such high rates of state and local immigration policymaking and circumvention of federal authority. Not surprisingly, citizens of states along the border as well as throughout the country are voicing their displeasure with federal inaction, and consequently state-level and local-level policymakers are reacting by trying to appease their constituencies with action that goes beyond political rhetoric.

²⁷ Calvo, Janet, "Alien Status Restrictions on Eligibility for Federally Funded Assistance Programs," in the *New York Law Journal*, p. 429-30 (New York Law Journal, 1987/88)

Chapter 2: Impact of Non-Border Enforcement Immigration Policy

US policy response to immigration control failures have historically been focused on border enforcement, however, while such efforts are of huge importance and will be discussed in greater detail in the following chapter, comprehensive immigration systems are inclusive many different governmental policy areas. In the case of Mexican migration to the US, family reunification, the visa system, temporary worker programs, worksite enforcement, and restricted access to public services are all part of immigration policy. The cumulative effect of these policies in the US has a tremendous impact on Mexican immigration and on immigrants.

Any analysis of a nation's comprehensive immigration policy must look at the visa and citizenship system, or what Susan Martin, of the Institute for the Study of International Migration, calls the "first line of defense" in regulating migration.²⁸ Specifically, it's important to decide whether a migrants potential to enter and work legally is able to satisfy the high demand for Mexican workers in the US, and many social and economical push factors in Mexico. Whether one can land on a "pathway to citizenship" and enter a legal permanent resident (LPR) under reasonable regulations, the temptation to enter illegally would be reduced. However, these processes are lengthy and difficult for the unskilled worker who generally has limited resources.

At the heart of the US visa and citizenship system is its preference given to family reunification over a skill-based criteria. Under current US policy, legal immigration quotas are determined by the Hart-Celler Immigration Bill of 1965, which is also the legislation that called for entry rights based on family reunification. Since 2002, the

²⁸ Martin, Susan. "Unauthorized Migration" US Policy Responses in a Comparative Perspective," p. 5 (Institute for the Study of International Migration, March, 2007) <http://isim.georgetown.edu>

department of US Citizen and Immigration Services (USCIS) has placed LPR applicants into one of seven classifications, each with its own quota limit. However, applicants that are immediate family members of immigrants who have naturalized and become US citizens are guaranteed entry. Other family members of US citizens and immediate family members of LPRs are given special quota limits designed to enhance their chances of legally crossing the border.

The US family reunification based system has a tremendous effect on the Mexican migrant, particularly since 1986. The IRCA offered amnesty to unauthorized immigrants that had been in the country since before 1982 (when the IRCA was originally proposed), and approximately 2.7 million immigrants residing in the US became LPRs and started on a potential pathway to citizenship. Approximately 2 million of these peoples were Mexican nationals. Naturally, the IRCA opened gateways for many Mexicans wanting to migrate because of family reunification. This is evident in the numbers -, of the 1,063,732 LPRs admitted in 2002 under policy largely determined by the IRCA, 63% entered as family members of citizens or LPRs. Typically, at least two-thirds of incoming migrants enter the US under this classification every year.²⁹ The IRCA gave amnesty to some 2 million Mexicans and when their families wanted to join them in their new homes, US policy made that possible. That did not, however, effectively slow unauthorized migration for any extended period of time, as the demand for workers in the US and conditions south of the border are always the strongest determining factors of migration flows.

²⁹ McKay, Ramah. "Family Reunification." (Migration Policy Institute, May 1, 2003)
<http://www.migrationinformation.org/Feature/print.cfm?ID=122>

Family members of US citizens are guaranteed entry to the US, and after five years as an LPR an immigrant may apply for citizenship. Once a citizen, an immigrant no longer has to worry about being subject to immigrant-related legislative measures that often affect LPRs. This time-period is important because when the 1996 Welfare Reform Act was passed – many aspects of which were anti-immigrant and restricted immigrant access to social services - immigrants that had naturalized were protected. Restriction of access to public services is a growing trend in federal, state and local policy measures, thus the importance of the potential for an immigrant to naturalize and be exempt from discriminatory laws.

Employment-based immigrants fill out much of the segment that does not migrate through family reunification, although even those admitted to the US on an employment-based visa are able to use family ties to their advantage during the application process.³⁰ However, no more than 100,000 employment based visas were distributed in any one year of the 1990s, not because of quotas but rather due to preferences for family reunification applications and excessive waiting periods. As with many bureaucratic, governmental institutions, some of the difficulties with the US visa system involve backlogs and delays. During the 1990s it took as long as 3 to 4 years for some visa applications to be processed. In its 1997 Executive Report the US Commission on Immigration Reform admonished officials for not having expedited the naturalization process, concluding that, “Two years later the naturalization process still takes too long, and previous efforts to expedite the processing resulted in serious violations in the integrity of the system. Instituting a system that is both credible and efficient remains a

³⁰ Lowell, Lindsay; Martin, Susan. “Competing for Skills: US Immigration Policy Since 1990,” p. 2 (Institute for the Study of International Migration, March, 2004)

pressing need.” The Commission added that in 1995, waits for spouses and children of LPRs was an unacceptable 3 years, and in 1997 there were waits of more than 4 years.³¹

Waits remained at least 2 years before efforts to reduce the backlogs in 2004 proved somewhat successful, and the number of such cases dropped from approximately 3.85 million in 2004 to 1 million in 2006. But a current lack of funding allocated to US Citizenship and Immigration Services (USCIS) has resulted in a slowdown of that progress, and delays remain rampant.³² Backlogs lead to misinformation in various governmental databases and cause painfully long waiting periods for applicants. The inaccuracies in the government’s system can affect unauthorized and authorized immigrants in many ways, particularly internal enforcement efforts that involve checking documentation and matching it with state and federal records. More importantly, the delays unintentionally encourage illegal entry, because history shows us that those eager enough to migrate northward from Mexico will resort to illegal channels when there’s no reasonable, legal alternative.

Another aspect of the US visa system worthy of attention is the lack of an adequate temporary-worker program in the US. Experts such as Daniel Griswold, Director of the Cato Institute’s Center for Trade Policy Studies, claim that the Bracero program of the 1940s to 1960s caused a reduction in illegal immigration.³³ At the time temporary workers were needed in the agriculture industry, and by opening legal channels both the Mexican migrant and US economy benefited. In fact, the modern, high

³¹ US Commission on Immigration Reform. “Becoming an America: Migration and Immigrant Policy,” 1997 Report to Congress (1997) <http://www.migration.ucdavis.edu/mn/cir/becoming2/Becam.html>

³² “Annual Report 2007 of the Citizenship and Immigration Services Ombudsman,” p. 11 (DHS, June 11, 2007) <http://www.dhs.gov/cisombudsman>

³³ Griswold, Daniel. “Illegal Immigration: Will Congress Finally Solve it?” (Cato Institute’s Center for Trade Policy Studies, May 22, 2007) <http://www.freetrade.org>

rate of illegal migration to the US made its initial ascent shortly after the Bracero program was halted in 1964.

Policy which opens legal gateways to the US naturally reduces flows of illegal migration. This is because the primary cause of illegal border crossings is that it's often the better alternative. However, since the IRCA legalized a vast number of the unauthorized immigrants residing in the US prior to 1982, there has been no further implementation of sufficient temporary work programs, and the current H-2A and H-2B visa classifications that primarily impact Mexican immigrants fall far short of providing viable options that immigrants can choose which are not illegal entry.

The H-2A visa applies to the agriculture industry and is the visa which gives legal entry to temporary and seasonal workers. The federal program, which was established under the IRCA, allows agricultural employers who anticipate a labor shortage to apply for the right to hire foreign workers on a temporary or seasonal basis. In order to qualify employers must prove that there are not enough domestic workers available and that the wages and of U.S. workers won't drop due to importing foreign workers.³⁴ The program mandates employers provide housing, meals or access to cooking facilities, compensate according to the standard US pay scale, but agree to hire any US worker that applies for the position before 50 percent of the contract has been fulfilled.³⁵ The H-2B temporary worker visa program is essentially the same as the H-2A, but applies to unskilled nonagricultural workers. This category primarily consists of meat-packing and service industry workers who are predominantly Mexican nationals.

³⁴ "H-2A Program Information." <http://www.wa.gov/esd/farmworkers/h2a.htm>

³⁵ "H-2A Labor Certification Process for Employers applying for Nonimmigrant Aliens to perform Temporary or Seasonal Work in Agriculture." <http://www.twc.state.tx.us/svcs/alc/h2a.html>

Despite evidence pointing to the necessity of a temporary worker program in proportion with the social and economical push and pull factors at work in US - Mexico migration, there has been an unwillingness to implement a system of such magnitude since the end of the Bracero program. While there is no officially accurate statistic, estimates of the inflow of illegal migrants into the US are often placed at about 500,000 per year.³⁶ Implementing a temporary worker system could greatly reduce the temptation of illegal crossings, and incentives such as being placed on track to eventually become an LPR could ease the transition for all parties involved.

The H-visa is not used more extensively for many reasons, and policymakers fear that although law requires temporary workers demonstrate their intent to leave the country once their job is complete, the mere intent of return migration will prove to be untrue. Perhaps this is why Congress passed laws further restricting use of the H-visa compared to its original form: While there had been no numerical quotas and little security for the domestic labor force, the Immigration Act of 1990 limited H-1B visas to 65,000. This visa classification does not impact the unskilled workforce, which is dominated by Mexican immigrants, but rather those in a “specialty occupations.”³⁷ Furthermore, in its 1997 report to Congress, the influential US Commission on Immigration Reform stated its opposition to large-scale temporary worker programs for unskilled workers, and sought to limit such permission to employers who pass a “stricter labor market protection test.”³⁸ Immigration policymakers’ intent is fairly cut and dried:

³⁶ Weintraub, Sidney. “The Immigration Debate and US – Mexican Relations.” (Center for Strategic and International Studies, June 25, 2007)

http://www.csis.org/component/option,com_csis_pubs/task,view/id,3928/

³⁷ Lowell, Lindsay; Martin, Susan. “Competing for Skills: US Immigration Policy Since 1990,” p. 10 (Institute for the Study of International Migration, March, 2004)

³⁸ US Commission on Immigration Reform. “Becoming an America: Migration and Immigrant Policy,” 1997 Report to Congress (1997) <http://www.migration.ucdavis.edu/mn/cir/becoming2/Becam.html>

recent US immigration policy is tilted toward protecting domestic workers at the cost of not having an effective temporary worker program. Naturally, illegal migration became increasingly likely as legal gateways to the US are shut.

Those immigrants that do choose illegal options, internal enforcement policies are naturally at the forefront of their concerns. The IRCA was the first time the US passed a law making it illegal to knowingly hire illegal workers, although since the Immigration and Nationality Act (INA) of 1952 there had been laws making it illegal to willfully transport, hire or harbor illegal immigrants.³⁹ Thus, at least on paper, the IRCA triggered initial US efforts to implement employer sanctions as a worksite enforcement strategy. The pitfalls and failures of this effort, however, are well documented, as is the general difficulty in carrying out worksite enforcement.

The US government and employers verify the status of newly hired workers. First and foremost, there is the Employment Eligibility Verification Form Process (I-9). The IRCA mandated employers fill out an I-9 form after hiring any new workers following the November 6, 1986 passage of the reform package. Upon being hired, employees are required to show at least one of 29 documents approved by the Department of Homeland Security (DHS) as proof of their legal status. I-9 forms must be kept on record for a period of three years, during which time they are available for governmental inspection. Violators of the I-9 process can be punished by civil and criminal charges, known as employer sanctions.⁴⁰ However, employer sanctions have proven to be ineffective and encouraged illegal immigrants to find ways to go undetected.

³⁹ Bump, Micah; Lowell, Lindsay; Martin, Susan; Schoenholtz, Andy. "Controlling Irregular Migration: The Challenge of Worksite Enforcement," p. 4 (Institute for the Study of International Migration at Georgetown University, September, 2007) <http://isim.georgetown.edu>

⁴⁰ Ibid, p. 5

One of the most common problems associated with worksite enforcement are the use of counterfeit documents, which has surged since the implementation of the IRCA. Furthermore, identity theft of real citizens has been rising continually since the 1980s.⁴¹ Unauthorized immigrants seeking jobs in the US have been forced to obtain these documents which often come at a high cost, thus further violating US law by possessing illegal or stolen documents. In fact, following worksite raids carried out by the US Immigration and Customs Enforcement (ICE) department in early 2008 which saw 863 criminal arrests across the country, it was reported most immigrants arrested were charged with identity theft.⁴²

There is also a great deal of confusion and mistakes that have been made in verifying the status of newly hired employees, which has resulted in problems for many legal immigrants wrongfully accused of working without permission. The Social Security Number Verification Service (SSNVS) is a system tested in 2002 and implemented in 2005, as the US addressed concerns over unauthorized immigration in the wake of the 9/11 attacks. SSNVS is internet-based and confirms whether the name of a worker matches the Social Security Number (SSN) on record with the employer.

SSNs are also used in the no-match letter service, in which the Social Security Administration (SSA) sends letters to employers with the identities of newly hired workers whose name and SSN do not match in governmental records. Formerly a service used to maintain the integrity of the Social Security system, since September of 2007 no-match letters have been used by the DHS as an immigration enforcement tool: new rules

⁴¹ US General Accounting Office. "Identity Theft: Prevalence and Cost Appear to Be Growing." (GAO-02-363, March 1, 2002)

⁴² "Testimony of Secretary Michael Chertoff before the House Committee on the Judiciary." (Released March 5, 2008) http://www.dhs.gov/xnews/testimony/testimony_1204746985090.shtm

were imposed on employers in the form of rules implemented that made it difficult for them to plead ignorance while not taking action against the employee. While not legally impossible for employers to retain an employee identified as a “no-match,” this makes such efforts not worth the time. Furthermore, ICE is able to use the documentation to prove the employer was aware of a worker’s status, and as useful information in conducting worksite raids.⁴³ E-Verify is another online system used by the DHS and SSA in which employers can volunteer to check the SSN and name for all newly hired employees watch according to the records of each department.

The impact the new no-match letter and other similar enforcement tactics have on immigrants is significant. An employee’s name may inaccurately appear on a no-match letter for a multitude of reasons, including change of name, clerical mistakes, and misspellings of immigrant workers’ names. Making matters worse for Mexican immigrants, employers who receive no-match letters are often businesses that employ low-skilled and low-wage immigrant workers, many of which have Mexican names that are frequently misspelled. Employers now reportedly don’t take as many chances and simply terminate workers whose names appear in no-match letters. Lost in the confusion are the jobs of numerous immigrant workers with legal permission to reside and work in the US, as well as many unauthorized workers who would not have been targeted by this system prior to the post-9/11 era. Worksite enforcement efforts based on inaccurate or incomplete databases and amidst a growing circulation of false documents is a policy conducive to discrimination against all foreign employees.

⁴³ Aizenman, N.C. “Bush Moves to Step Up Immigration Enforcement,” in *The Washington Post* (Washington Post, August 11, 2007) <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/10/AR2007081001113.html>

Due to worksite enforcement having proved to be more rhetoric than reality - at best a failed effort throughout US history that at times has pacified anti-immigrant factions – federal, state and local governments have adopted immigrant-related legislation and enacted many *symbolic* laws as supplements to clear-cut immigration reform packages such as the IRCA or IIRIRA. Perhaps the greatest example on the federal level is the Welfare Reform Act (WRA) in 1996, which put significant restrictions on immigrant access to social welfare programs. Under the WRA, legal immigrants may not apply for welfare or public benefits within the first 5 years of entering the country. Excluded from these restrictions are emergency and disaster services.⁴⁴ Immigrants have been forced to find loopholes by relying on public services not restricted within this and similar laws, but at no point did the WRA accomplish the mission objective of reducing the economical toll each immigrant takes on the nation's public services and overall economy.⁴⁵

One result of continually high Mexican migration rates to the US has been a “Mexican Diaspora” throughout the country. While California and Texas both lead the way in terms overall size, states such as Tennessee, Mississippi, Wyoming, and Georgia saw over a 100 percent increase in their immigrant populations between 2000 and 2005. In 2006, state-level lawmakers responded to growing populations and federal failures by introducing more than 550 immigrant-related bills into the state legislature relating to areas such as public services, worksite enforcement, and identification requirements. While most state-level laws have sought to restrict immigrants, not all have been in line

⁴⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 § 411 (US Department of Labor, August 22, 1996) <http://wdr.doleta.gov/readroom/legislation/pdf/104-193.pdf>

⁴⁵ Camarota, Steven A. “Back Where We Started: An Examination of Trends in Immigrant Welfare Use Since Welfare Reform.” (Center for Immigration Studies, March, 2003) <http://www.cis.org/articles/2003/back503.html>

with anti-immigrant interest groups, such as in 2006 when Nebraskans votes to offer in-state college tuition for children of unauthorized immigrants.⁴⁶ State-level activity has been growing since the 1980s, but with much more velocity since the 1990s and 9/11 attacks.

Restricting immigrant access to public services has never caused a decrease in unauthorized migration to the US, which brings the practice into question. Both the 1997 Report delivered by the US Commission on Immigration Reform and Binational Study outwardly criticized and called for an end to cutting off immigrants from access to public services.⁴⁷ Such restrictions encourage anti-immigrant aggression that is conducive to discrimination and even violence. More importantly, they don't address the root cause of Mexican migration to the US, which in most cases is economically motivated, and do not result in an increase in legal migration.

Since 1986 and the IRCA, internal enforcement efforts such as worksite raids and employers sanctions have failed to slow unauthorized migration. The visa system is open to Mexican migration in many instances due to its preference given to family reunification, numerous problems such as backlogs, cost, lack of a temporary worker system and unreasonably high visa standards result in continued illegal entry rates. And these failures by the federal government have increasingly motivated state and local-level actors to introduce their own immigration legislation, often promoting anti-immigrant policies. For example, the text of a well-know proposal in Arizona's 2004 general election known as Proposition 200 read, "this state finds that illegal immigration is

⁴⁶ Boulard, Garry. "Immigration - Left to the States," in *State Legislatures*, p. 16 (October/November, 2006) www.ncls.org

⁴⁷ Latapi, August Escobar; Martin Susan. "Mexico – US Migration Management: A Binational Approach," p. 7 (CIESAS Occidente ISIM- U. of Georgetown) <http://www.hewlett.org/NR/rdonlyres/E7D5BD75-AB6E-4780-A354-EB4D4BBA9779/0/USMexicoMigration.pdf>

causing economic hardship to this state and that illegal immigration is encouraged by public agencies within the state that provide public benefits without verifying immigration status.”⁴⁸ Accordingly, the bill mandated immigrants show identification at voting booths, provide documentation of their immigration status to apply for benefits, punish public officials that offer public offer public services without verifying one’s immigration status.

Perhaps the most publicized of such measures occurred in California when Proposition 187 was passed by voters on November 8, 1994. The statute was designed to cut-off immigrants from state public services such as medical care and education for immigrant children.⁴⁹ It was attacked by opponents as unconstitutional and immediately suspended while mired in a slew of court cases. It eventually was defeated on the grounds it overstepped the limits of state authority and sought to preempt federal powers. Also, the law called for the deportation of immigrants in California without due process of the legal system, which combined with its denial of free education for immigrant children, violated the 14th Amendment of the US Constitution requiring “equal protection.”⁵⁰ Based on modern policy history, it appears that without successful immigration reform, there will be a continuation of state and local activity that has already compromised the integrity of federal authority along the border.

⁴⁸ “Arizona 2004 Ballot Propositions: Proposition 200”
<http://www.eagleforum.org/column/2004/dec04/prop200.pdf>

⁴⁹ Mailman, Stanley. “California’s Proposition 187 and its Lessons,” in the *New York Law Journal*, p. 3 (New York Law Journal, January 3, 1995) www.ssbb.com/article1.html

⁵⁰ Ibid

Chapter 3: Impact of Border Enforcement and Detainment Policy

The IRCA proved ineffective in slowing unauthorized migration and properly reforming the process for authorized entries. The main reason for this is because when internal enforcement efforts proved difficult to implement and enforce, Congress turned its attention to securing the southern border with force. The devotion of resources to border enforcement strategies has been a growing trend in US immigration policy since the IRCA, peaking in the 1990s when the Clinton administration supported new strategies that called for increased patrolling all along the southern frontier. In fact, between 1985 and 2002, spending on border enforcement grew from \$1 billion USD to \$4.9 billion USD, with most of the money landing in the hands of the BP.⁵¹ On the other hand, interior efforts during the same time period received only 11 percent of the funds appropriated for immigration enforcement. In the post-9/11 era, as pressure to secure the border has continued to mount on federal and state policymakers, funds for border enforcement shot up from \$2.1 billion in 2001 to \$2.8 billion in 2002.⁵² Wayne Cornelius, Director of the Center for Comparative Immigration Studies at the University of California, San Diego, accurately summed up recent US immigration policy in a 2004 article when he wrote, “During the past 10 years, the overwhelming emphasis in US immigration policy has been on border enforcement, primarily on the US-Mexican border. Congress has more than tripled spending for border enforcement activities since

⁵¹ “Immigration Enforcement Spending Since IRCA,” p. 1 (Migration Policy Institute, November, 2005) http://www.migrationpolicy.org/ITFIAF/FactSheet_Spending.pdf

⁵² Ibid, p. 2

1993, despite evidence that this unprecedented border buildup has failed to deter significant numbers of unauthorized migrants from attempting entry.”⁵³

Heightened border enforcement strategies became the focus of the BP in 1993, when Silvestre Reyes, Chief Patrol Agent of the BP in the El Paso, Texas region, initiated Operation Hold the Line (HTL). The operation was centered in highly populated areas along the Texas-Mexico southern border, and was designed to make the BP increasingly visible to potential border-crossers. Formulated largely in response to pressure from US citizens in cities most affected by unauthorized immigration, a primary goal of HTL was to reduce the ease with which Mexican migrants could cross the border in populated regions. At the outset of HTL, BP funding, staffing and overtime hours increased sharply in order to amplify their presence and thus deter illegal crossers.⁵⁴

In order to bring attention to what the BP promoted as a successful, new enforcement strategy, the agency started to measure its standard of success by how low the number of apprehensions dropped following the HTL’s inauguration. This contrasts with pre-HTL measures of success, during which time the BP had historically considered a higher number of apprehensions as a sign of greater enforcement. However, that mindset changed following HTL, as the significance of fewer apprehensions was thought to mean that there must have been fewer unauthorized immigrant crossings attempted. As where apprehensions had been on a 33 percent increase the two years prior to HTL, there was a drastic reduction along the El Paso – Ciudad Juarez border region. Eventually funding allocated to the BP decreased after the first year of HTL, as did the

⁵³ Cornelius, Wayne. “Evaluating Enhanced US Border Enforcement.” (Migration Policy Institute, May 1, 2004) http://www.migrationpolicy.org/pubs/US_Immigration_Resources.php

⁵⁴ Clayton Jr., William E. “Our border can be controlled, says analysis of two crackdowns Study looks at El Paso and San Diego,” p. A15 (Published in the Houston Chronicle, June 1, 1995, and obtained from the Center for Immigration Studies) <http://www.cis.org/articles/1995/bordercoverage.html>

amount of number of BP agents stationed along the border, and apprehensions slowly increased again as crossers seized the opportunity the break through the weakened blockade deterrent.⁵⁵ Frank Bean, Director of the Center for Research on Immigration at UC Irvine, concluded in his studies that the longer HTL lasted, the more its deterrence of unauthorized immigration waned.⁵⁶ However untrue it may have been, HTL continued to be heralded as a successful, new strategy that deterred illegal crossings. Although the information we have shows us that there were continued high rates of unauthorized migration in the years following HTL, it and similar initiatives are common because in the case of HTL, it quiet much of the El Paso population that had long complained about peddlers and crime as a consequence of lackadaisical border enforcement. In January, 1997, construction began to extend HTL 10 miles west along the New Mexico portion of the El Paso border region, carried out with much the 450 million dollars earmarked to the Immigration and Naturalization Services (INS) under President Clinton's immigration legislation.⁵⁷

Although there were many operations inspired by HTL, the one that garnered the most attention – much of it negative - was Operation Gatekeeper in California. Gatekeeper was announced on September 17, 1994 by then-US Attorney General, Janet Reno. Between 1994 and 1997 the US almost doubled the INS budget, which ballooned to 800 million dollars. Border fencing construction plans in the California region were

⁵⁵Martin, John. "Can We Control the Border: A Look at Recent Efforts in San Diego, El Paso and Nogales." (Center for Immigration Studies, May, 1995) <http://www.cis.org/articles/1995/border/index.html>

⁵⁶"Can We Control the Border? A Look at Recent Efforts in San Diego, El Paso and Nogales." (Center for Immigration Studies, 1995) <http://www.cis.org/articles/1995/border/border3.html>

⁵⁷"Operation Hold the Line Extended," in the *El Paso Times* (El Paso Times, January, 1997) http://www.nmsu.edu/~frontera/old_1997/jan97/197hold.htm

expedited and doubled, while various other technological innovations were employed by the BP.

Fencing and technology are have been tactics of US border enforcement efforts since the IRCA, but have become increasingly popular since HTL, Gatekeeper and particularly the 9/11 attacks. The Arizona Border Control Initiative (ABC), which was announced by the DHS on March 16, 2004, is a multi-faceted operation which combines the powers of the US Customs and Border Protection (CBP agency, the Transportation Security Administration (TSA), ICE and other security-related agencies within the US government. Implemented due to the Arizona border region becoming the main gateway to the US in 2004, the ABC called for a 370-mile fencing project along the Arizona – Mexico border. The ABC also combined US and Mexican intelligence in order to expedite the removal of unauthorized immigrants increased the amount of BP agents along the Arizona border, deployed Blackhawk helicopters and funded other technologically advanced tools such as Unmanned Aerial Vehicles (UAVs), which patrol and monitor commonly crossed regions.⁵⁸ The Federal Bureau of Investigation (FBI) and DHS testified to Congress in 2005 that that the Mexican border was susceptible to terrorist plots, however, admitted there was no evidence pointing to such conclusions.⁵⁹ Clearly, the US has the sovereign right and moral obligation to protect its borders and citizens from terrorist attacks, but at this point the group most impacted by the ABC and similar operations is unauthorized Mexican immigrants.

The US-sponsored militarization of the border, its fencing policies, and revised BP strategies that began during the 1990s and continue in the post-9/11 era have re-

⁵⁸ Meeks, Brock N. "US Agency Poised for Big Border Security Operation: Arizona – Mexico Stretch Focus of Effort," (MSNBC, March 29, 2005) <http://www.msnbc.msn.com/id/7317822/>

⁵⁹ Ibid

routed unauthorized immigrant crossings away from the usual urban points to treacherous, desert and mountain terrain. US Homeland Security Secretary Michael Chertoff said in a December, 2007 press conference that the US is committed to building 370 miles of pedestrian fencing and approximately 300 miles of vehicle fencing along the southwestern border, which will “fence about 90 to 95 percent of the border from the Pacific Ocean to the New Mexico – Texas border.” Much of the Texas border, as he pointed out, is guarded by the Rio Grande River.⁶⁰ Experts Jorge Dominguez and Rafael Fernandez De Castro describe the Gatekeeper-sponsored border wall, which they point out was built largely by army reservists, as the following:

*The US Operation Gatekeeper wall of corrugated steel landing mats is string enough to stop trucks that had rammed through earlier barriers... The fence cuts across miles of scrub while stadium lights illuminate the thick underbrush. The wall is also electronic. An array of gadgets can find hidden compartments where drugs may be stashed, scan license plates to see if a car is stolen, and help law enforcement agents see people in the bushes.*⁶¹

There are consequences of ongoing hard power policies such as these, primarily for the Mexican immigrant. One of these is the high rate of deaths along the border, where more than 3,000 people perished between 1997 and 2007.⁶² During the four years that immediately followed Gatekeeper’s implementation, 324 people died of heat exhaustion in the desert and mountainous regions, or by drowning.⁶³ Gatekeeper has been investigated and condemned by various humanitarian organizations such as

⁶⁰ Chertoff, Michael. “Remarks by Homeland Security Secretary Michael Chertoff at a Pen-and-Pad Briefing on Border Security.” (DHS, December, 7, 2007)
http://dhs.gov/xnews/speeches/sp_1197294302967.shtm

⁶¹ Dominguez, Jorge I., Fernandez de Castro, Rafael. *Between Partnership and Conflict: The United States and Mexico*, p. 136 (Routledge, 2001)

⁶² Griswold, Daniel. “A Boon Rather Than a Burden: Why America Needs Comprehensive Immigration Reform,” p. 3 (Cato’s Center for Trade Policy Studies, August 28, 2007)
<http://www.freetrade.org/node/741>

⁶³ Dominguez, Jorge I., Fernandez de Castro, Rafael. *Between Partnership and Conflict: The United States and Mexico*, p. 136 (Routledge, 2001)

Amnesty International and the American Civil Liberties Union, the latter of which in 1999 filed formal charges in Washington and with the Organization of American States due to the militarization of the southern border.⁶⁴ Furthermore, vigilante groups such as the aforementioned Minutemen have reportedly attacked, and detained many immigrants at the border, while in other instances hate groups have been accused of torturing and murdering crossers.⁶⁵ The US militarization of the border and simultaneous failure to properly halt the flow of unauthorized immigrants has contributed to anti-immigrant sentiment, as well as the mobilization of groups that put the well-being of immigrants in danger.

While one result of US border enforcement policy and militarization is an increase in the danger of the actual crossings, another is the subsequent rise of human smugglers known as coyotes. The distinction between human trafficking and human smuggling should be noted: while the former must involve forced migration and exploitation, the latter is voluntary migration with that involves push and pull factors in the sending and receiving states. Coyotes have existed since the end of the Bracero Program in 1964, and since 1983 most Mexican immigrants have used their services.⁶⁶ As early as 2001, reports indicated the longstanding local coyotes were evolving into major criminal networks that could earn billions of dollars. Prices soared from around 300 dollars per person in the mid to late 1990s to between 1,500 and 2,000 dollars in

⁶⁴ “Tear Down the Wall,” from the Global Exchange Statement on US-Mexico Border Migration (Global Exchange, August 8, 2000)

<http://www.globalexchange.org/countries/americas/unitedstates/california/bgUSMexico.html>

⁶⁵ Ibid

⁶⁶ Castro, Gustavo Lopez. *Factors That Influence Migration*, p.965 (Mexican Ministry of Foreign Affairs and US Commission on Immigration Reform, 1998) <http://www.utexas.edu/lbj/uscir/binpapers/v3a-6lopez.pdf>

2001.⁶⁷ Both the cost of and likelihood immigrants would use human smuggling services skyrocketed following Gatekeeper.⁶⁸

In the case of US – Mexico migration, the growth of smuggling networks has significant ramifications for both the Mexican government and the Mexican immigrant. The government must compete against growing criminal networks along the border, which bring in huge amounts of money while partaking in many types of criminal activity, including murder, theft, corruption, and currently the drug war. According to comments made by the BP in 2008, immigrants often act as drug mules by carrying drugs for various drug syndicates.⁶⁹ Clearly, this has a negative impact on the Mexican government, US government, and the immigrants themselves: the criminal networks prosper and grow at the cost of all the three groups by violating the laws of both nations, while forcing often otherwise harmless immigrants to be middle-men in drug trafficking.

Another consequence for Mexican unauthorized immigrants can be seen in situations where officials have manipulated US laws that were originally designed to combat smuggling organizations by using them to fight unauthorized immigration. This is a state and local phenomenon that arose both from the failure of the federal government to implement comprehensive reform, and also due to a US militarization of the border that unintentionally helped give rise to human smuggling networks. A 2005 state law in Arizona permitted Country Sheriff Joe Arpaio's mobilization of a 300 man posse that fought unauthorized immigrants by charging them with criminal conspiracy for

⁶⁷ Jordan, Mary. "People Smuggling Now Big Business in Mexico," in *The Washington Post*, pg. Page A01 (Washington Post, May 17, 2001)

⁶⁸ Dominguez, Jorge I., Fernandez de Castro, Rafael. *Between Partnership and Conflict: The United States and Mexico*, p. 137 (Routledge, 2001)

⁶⁹ Francis, David. "Mexican Drug Cartels Move Into Human Smuggling," in the *San Francisco Chronicle* (SF Chronicle, March 31, 2008) <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/03/31/MN8MV94C7.DTL>

using the smugglers. This was not the goal of a state law originally designed with potential incarceration of smugglers in mind.⁷⁰ In November, 2006, attorneys legally contested the efforts in a class-action lawsuit filed against Arpaio's Maricopa County, essentially on the basis it was a manipulation of anti-smuggling measures. All six immigrants named in the lawsuit were arrested and detained in Maricopa County, but never before had commit a crime in the US or Mexico.⁷¹ Additionally, the county's practices have been criticized by numerous groups, including the Amnesty International, American Civil Liberties Union, Anti-Defamation League, and Arizona Ecumenical Council.

Arpaio continues to be a source of major controversy, seen in his attacks on the federal government for its immigration failures and against opponents of his actions. This includes Arizona Attorney General Terry Goddard and Phoenix Mayor Phil Gordon, who have called the Maricopa sheriff out for his often unethical tactics.⁷² Yet, however as legally questionable and misguided Arpaio's efforts may be, they are rooted in influential state and local sentiments which have been touched upon throughout this report. This is evident in the fact he was originally elected in 1992, and reelected in 1996, 2000 and 2004.⁷³

The border buildup combined with these aggressive federal, state and local initiatives have had some important impacts. One is the rush to the border, in which

⁷⁰ Archibold, Randal C. "Arizona County Uses New Law to Look for Illegal Immigrants," in the *New York Times* (NY Times, May 10, 2006) <http://www.nytimes.com/2006/05/10/us/10smuggle.html?ex=1304913600&en=28d397ed3576bf8f&ei=5090&partner=rssuserland&emc=rss>

⁷¹ "Groups Sue Arizona County Over Anti-Smuggling Immigration Law." (Associated Press, November 22, 2006)

⁷² Fenske, Sarah. "Sheriff Joe Wants to Read Phil Gordon's Email," in the *Phoenix New Times* (Phoenix New Times, May 15, 2008) <http://phoenixnewtimes.com/2008-05-15/news/sheriff-joe-wants-to-read-phil-gordon-s-e-mail/full>

⁷³ "Maricopa County Election Results." <http://recorder.maricopa.gov/electionresults/ElectionResults.aspx>

immigrants fear heightened US restrictions and rush to the border in hopes of crossing before the policy begins to impact reality. Another is people who get legal entry choose to come and overstay their visas, working without authorization and fly under the radar of the US government. This poses the ultimate problem for the US government, and does the immigrant no favors either due to their illegal status. Yet this is a common occurrence since HTL and subsequent border enforcement operations blocked off urban crossing points and forced immigrants to rethink the most prudent avenue of migration, Return migration to Mexico has been lower while the number of overstays apprehended by ICE has consistently been higher during times of stepped up enforcement operations.

Those caught for overstays or a variety of other laws that illegal immigrants are often subject to violation of in the US are then detained. Immigrant detention centers have long been used by the US, and currently the ICE agency operates under a policy which states, "Detention and removal of illegal aliens is a priority of ICE. This commitment has been backed by significant resources devoted to detention and removal efforts."⁷⁴ Both statements are accurate: following the implementation of the IIRIRA in 1996, there was a major increase in funding channeled to these facilities. Between 1996 and 1997 there was a 64 percent increase in the funds appropriated for the removal and detainment of immigrants and the IIRIRA mandated the detention of unauthorized, criminal immigrants.⁷⁵ The number of immigrants detained since the passage of the

⁷⁴ "Immigration Detention Facilities." (ICE) <http://www.ice.gov/pi/dro/facilities.html>

⁷⁵ "Immigration Enforcement Spending Since IRCA," p. 3 (Migration Policy Institute, November, 2005) http://www.migrationpolicy.org/ITFIAF/FactSheet_Spending.pdf

IIRIRA nearly quadrupled by 2002, skyrocketing from approximately 5,000 detainees in 1996 to 20,000 – 25,000.⁷⁶

There are three categories of immigrants generally detained by the US government.⁷⁷ The first is people seeking asylum who have arrived in the US without proper documentation. This does not impact Mexican immigrants because immigration from Mexico has never fallen under the umbrella of political asylum. The second category is people who have overstayed a visa, worked without proper documentation or commit any of the numerous common, immigration violations. Undoubtedly, this has a tremendous effect on the Mexican immigrant, because, as previously noted, US immigration policy is in many aspects conducive to overstays and the use of false documents. The third category is immigrants who have been convicted of a crime at any time in the past, which naturally has a potential affect on immigrants of all nationalities. This means that if the US discovers a prior conviction of an immigrant, even LPRs, they can be detained for an indefinite period of time.

A fourth category has also emerged since the 9/11 attacks under which any immigrant “suspected of terrorist activity” can be immediately detained for an indefinite amount of time. According to some immigration attorneys in California, although Mexican immigration does not have a strong association with terrorism, Mexicans have been detained under this category. Moreover, the legal standard for proving one is suspected of terrorist activity is extremely low, which makes any immigrant a potential

⁷⁶ “Some Facts about Immigrant Detention.” (Jews for Racial and Economic Justice, winter, 2002)
<http://www.jfrej.org/Facts.Immigrant.Detention.html>

⁷⁷ Ibid

detainee under this category.⁷⁸ Obviously, once detained immigrants are subject to the often perilous condition of prisons and designated immigrant detainment facilities.

⁷⁸ Felch, Jason; Dayton, Todd. "The Waiting Game: Mexican Immigrants Face Tough Choices Amid Recession, Terror Fallout: Stay Jobless or Go Home," from *The New World: America's Borders in an Age of Terrorism* (UC Berkley) <http://journalism.berkeley.edu/ngno/reports/newworld/immigrants.html>

Conclusion

Since the 1980s US immigration policy has been centered on militarizing BP efforts, and has gone even further in that direction since 9/11. The defining immigration reform packages of the past three decades - the IRCA, Immigration Act of 1990 and IIRIRA - all channeled funding primarily toward front-line efforts and secondarily to internal enforcement. Despite a continual dose of political rhetoric from the various administrations and Congress, during this time of militarization many aspects of a comprehensive immigration control went overlooked. These are non BP efforts such as visa reform, temporary worker programs, proper worksite enforcement and effectively addressing the poor state of the Mexican economy.

Congress has historically controlled the course of US immigration policy, and due to typical Congressional interests, it is thus determined primarily with the domestic political climate in mind. The US president and executive branch is involved in immigration policymaking - however, the extent of such involvement is affected by a number of factors: it is usually limited to promoting or vetoing laws that made it past the legislative stage, and delivering sometimes-influential political speech acts. Despite federal authority, state and local level actors have become increasingly involved in immigration enforcement since the 1990s, and have been passing laws at unforeseen rates.

US policy has failed to control flow of Mexican migration, despite purported internal efforts and militarized border enforcement in urban areas. The IRCA gave amnesty so nearly 2 million Mexicans inside the US, but failed to enable future legal migration. Inflows are determined first by the state of US job market, and second by the

Mexican economy. Therefore, with the world's wealthiest nation neighboring a developing nation, the flow of peoples across the border in search of more money and a better life is an uncontrollable force. The goal, of course, is the establishment of a logical, comprehensive policy in step with the demands of the US job market and push factors in Mexico. In other words, what's needed are more legal entry options into the US, made attainable for the average unauthorized migrant who might otherwise enter illegally.

As the abundance of completed research on US immigration policy illustrates, there are steps that could be taken to improve the future condition of US - Mexico migration. The hopes that NAFTA would usher Mexico into a new era economically and help alleviate migration pressures has long been disproved. While it is true NAFTA enhanced some aspects of Mexico's overall economic indicators, NAFTA permits impactful subsidies in the corn industry and a variety of other agricultural products that have put many Mexican farmers out of business. Many of these people who come from Chiapas and Oaxaca have eventually migrated northward, contributing to the pressures on the US and illustrating a case of its unintentional promotion of Mexican migration. NAFTA is in no regard an immigrant bill, but it did not serve small business in Mexico well, within such businesses lay the unskilled labor class that typically migrates to the US. If the US wants to reduce immigration pressures from Mexico and simultaneously help potential Mexican immigrants, it will work with the Mexican government to assist the unskilled worker class still in Mexico. Instead of creating an atmosphere conducive to outmigration, the US and Mexico must bilaterally ease push factors in the sending nation by focusing on development in areas with high sending rates.

The US should focus on creating legal mechanisms for legal migration, keeping a close eye on Mexico and its unique status as a developing, neighboring country. This includes a temporary worker program that pays respect to the tremendous pressures on US - Mexico migration flows. The IRCA was a good policy in the sense it acknowledged there were too many undocumented immigrants to realistically punish or deport. It underscored the overwhelming evidence that immigrants positively impact the US economy and serve its labor force well. But it did not create new avenues for future waves of immigrants to come legally, as the H-visa and other programs called for under the legislation were formed with unrealistic expectations. While employer sanctions certainly have their proper place, the dilemma of unauthorized immigrant workers could be partly remedied by worker programs with options of staying permanently and eventually landing on a road to citizenship. This would be positive for all parties involved, as it provides immigrants incentive to live in accordance with the desires of the state, and discourages unauthorized entry by offering viable alternatives.

Enforcement at the border must remain a key feature of immigration control due to the realities of the post-9/11 world, and it goes unquestioned that is it any nation's sovereign right to secure its borders and protect its citizens. However, continually high unauthorized migration rates show the militarization at the border has been a failed long-term effort. Clearly, the task of securing a nearly-2000 mile border with numerous urban areas is impossible to accomplish solely through enforcement. Under modern policy immigrants have been attempting to cross illegally in rural, dangerous areas, giving rise to criminal syndicates that damage the integrity of both governments and place the

immigrants in grave danger. Enforcement efforts need to be reexamined for the sake of all parties involved.

Currently approaching the 2008 US presidential election, questions abound about what the two candidates Democrat Barack Obama and Republican John McCain would strive to accomplish regarding immigration policy. Obama has shown some inclination in the past to work toward pro-immigrant legislation, such as regulating the cost of visa applications in the Citizen Promotion Act.⁷⁹ Meanwhile, McCain has reverted back to more conservative policy ideas since the 2006 Congressional immigration discussions, when he demonstrated that he was willing to cross party-lines in order to come to a solution that would appease all players in the complex debate. Truthfully, there's no reason to that he or McCain have any more at stake than any other president since the 1980s, and the matter will most likely left in the hands of Congress. If that's the case, the same party cleavages and interest groups that have confused the debate for years will continue doing the same, while bilateralism will have a bleak future in immigration policy reform.

⁷⁹ "Barack Obama: Fighting for Comprehensive Immigration Reform." (Barackobama.com, accessed September 11, 2008) <http://www.barackobama.com/issues/pdf/ImmigrationFactSheet.pdf>

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