



No Illusions: Paradigm Shifting on Mexican Migration to the United States in the Post-9/11 World

T. Alexander Aleinikoff

The U.S.-Mexican immigration relationship has never been good. For most of their histories, the two countries have determined policy unilaterally despite a multitude of interconnections and a shared border of thousands of miles. The willful refusal to recognize common interests, the ability to pretend that sound policies can be crafted in isolation, is remarkable—and deeply counterproductive. Hopes for a “grand bargain” under the leadership of Presidents Fox and Bush faded quickly after the events of September 11, 2001. There may be a time in the future when such an agenda might be fruitfully pursued.¹ But at the moment, at least on the U.S. side, policy development is viewed primarily—if not exclusively—as a matter of domestic politics and legislation. Interestingly,

however, the debate on the American side may well play out in terms that are compatible with the elements of a “grand bargain.” I will argue that this result is due to shifting paradigms in the understanding of the U.S.-Mexican relationship: the Bush Administration’s immigration proposals show movement away from a paradigm of *control* and toward one of a *continental labor market*.

Mexican Migration Dominates U.S. Immigration

Mexico is the country of origin of the largest number of foreign born residents of the United States—about 10 million persons, constituting about 30% of the foreign born population (this is up from 3% in 1960).

May was a busy month for the immigration reform debate in the United States. Congress passed the Real ID Act, which restricts access to driver’s licenses for undocumented immigrants, limits judicial review of removal orders, and alters the political asylum process. A few days later, Senators McCain and Kennedy and Reps. Flake and Gutierrez introduced a bill to create a program for temporary immigrants (guest workers) with a path to earned legalization for those already in the United States without documents.

Also in May, the Migration Policy Institute, along with the Woodrow Wilson Center and the Manhattan Institute, launched a major Task Force on Immigration and America’s Future. Chaired by Wilson Center President Lee H. Hamilton and former Senator Spencer Abraham, and directed by MPI Senior Fellow Doris Meissner, the task force seeks to generate workable policy ideas for U.S. immigration reform

In this month’s bulletin, T. Alexander Aleinikoff, Dean of the Georgetown University Law Center, offers a perspective on an upcoming paradigm shift in U.S. immigration policy and how this may affect the U.S.-Mexico relationship. This paper was prepared as part of a study on Parameters of Partnership in U.S.-Mexico relations, co-sponsored by the Wilson Center and the Consejo Mexicano de Asuntos Internacionales, and was updated by the author for this bulletin. In the appendices, we have included a summary of the McCain-Kennedy immigration bill and additional information on the immigration task force. —*The Editors*



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In fiscal year 2003, about 16% of the immigrants receiving lawful permanent resident status were Mexican nationals (114,000 of 705,827).² While this number may be smaller than the American public might think, it is nonetheless more than twice that of the next largest sending country—India (7%).³

The vast majority of deportable non-citizens removed from the United States are Mexicans. In fiscal year 2003, just over 1 million non-citizens were deported, of whom 956,000 were Mexican nationals. It is estimated that 4.7 million undocumented Mexicans live in the United States; this is about 55% of the overall undocumented population.⁴

These numbers are large, but it should be kept in mind that native-born Mexicans make up only 3% of the overall U.S. population. Mexican-Americans, while two-thirds of the Hispanics in the U.S., constitute 8.8% of the U.S. population.

Immigration Policy Cycles: The U.S.-Mexican Relationship

Taking the long view, one can see a cyclical pattern in U.S. immigration policy: times of welcome and tolerance of immigrants are followed by times of fear, anti-immigrant animus and restrictionism. Thus the Irish and Catholic flows of the 1840s brought about the Know-Nothing movement; the welcome of Chinese workers in the middle of the 19th century produced the Chinese Exclusion Acts of the 1880s; the southern and eastern European flows at the beginning of the 20th century ultimately led to the National Origin Quota Acts of the 1920s; and the large undocumented flows from Mexico following the termination of the Bracero Program eventually led to the 1986 legislation granting amnesty and imposing employer sanctions. In the most recent cycle, the post-1986 undocumented flows—caused in part by the legalization program and the failure of employer sanctions—combined with the Reagan era attack on the welfare state to produce Proposition 187, the very tough immigration legislation of 1996, and the build up at the border under the Clinton Administration.⁵ It is worthy of note that while the events of September 11, 2001 put the Fox-Bush immigration negotiations on ice, the new focus on terrorism has shifted anti-alien animus to Arab and Muslim immigrants that, in a paradoxical way, may make a legalization program for largely Mexican immigrants (now seen as hard workers, not terrorists) more conceivable.

Throughout all these cycles, Mexico has frequently been treated as a special case. Thus, the National Origins Quota system, as enacted in the 1920s, applied only to the eastern hemisphere so as not to fundamentally affect Mexican migration. From the 1940s to the 1960s, the Bracero Program brought millions of temporary Mexican farm laborers to the United States. Until the imposition of employer sanctions in 1986, criminal penalties for harboring undocumented immigrants did not apply to employers—a provision commonly known as the “Texas proviso” and written to shield southwest growers who employed undocumented Mexican workers. Technical amendments to the immigration code in the 1990s were adopted to ameliorate “per country” limits on migration that had produced intolerably long waits for immediate family members seeking lawful admission primarily from Mexico.

The Current Policy Space

Given these two historical trends—policy cycles and a special relationship with Mexico—it is not surprising that the aggressive legislation of the 1990s has led to interest in a kinder, gentler correction in recent years and to talk of a “grand bargain” between U.S. and Mexico.⁶ As noted, those discussions largely came to an end after September 11, 2001, but President Bush put the issue on the domestic agenda with a dramatic proposal in January 2004. Adapting legislation introduced by Arizona Republican members of Congress Sen. John McCain and Representatives Jim Kolbe and Jeff Flake, Bush proposed a large-scale temporary worker program granting entry to workers outside the United States and status to undocumented migrants already employed in the United States.

The Bush proposal gained no traction in the run up to the 2004 election. The right wing of the Republican party assailed it as an “amnesty” which would only encourage further illegal immigration; Democrats generally criticized the fact that the proposal did not provide an immediate route to permanent resident status for workers granted temporary status.⁷ But the current session of Congress may prove more propitious for immigration reform legislation.⁸ President Bush did better with Hispanics in 2004 than he had four years earlier (although by how much is a matter in dispute⁹), and Republicans may now seek to court Hispanic voters with more ardor. It is thus not

surprising that the President reaffirmed his interest in immigration legislation in his 2005 State of the Union address. The White House has apparently given tacit approval to efforts by Senators McCain and Kennedy to craft a bipartisan immigration reform bill.¹⁰

There is thus both a large policy space for immigration legislation and some motivation to enact something sooner than later. In all likelihood, the Bush proposals have set the parameters. That is, the debate will largely focus on legalization and a temporary worker program. It is not likely that legislation will be specifically directed at Mexicans, but Mexican immigrants will in any event be the primary beneficiaries of legislation because of the dominant position they hold in the immigration system.

The after-effects of September 11 appear to continue to depress chances of a “grand bargain” with the Mexican government. But, to a surprising degree, it seems likely that immigration policy unilaterally adopted by the Administration or Congress will largely coincide with elements of the grand bargain discussed in the pre-9/11 days.

Paradigm Shift?

By largely occupying the policy space, the Bush proposals are highly significant. But even more important may be the emerging paradigm shift that underlies them.

Since 1986, U.S. immigration policy has been constructed with a *control* paradigm. Based on a strong view of national sovereignty—within which the federal government is charged with controlling the border and rules of membership—the central task of immigration policy has been to deter illegal immigration and patrol the legal immigration system. This was explicitly the policy of the Clinton

Administration: a massive build up at the border was seen as necessary for the continuation of public support for generous levels of green cards. And while the Clinton Administration made gestures at improved border relations with Mexico, the new cooperative efforts were largely directed at improving border enforcement (for example, working with Mexican authorities to combat illegal smuggling).

From the perspective of the control paradigm, regularization and temporary worker proposals are supportable on the following premises: (1) the undocumented flow to the United States *should* be stopped but *cannot be* stopped, it can only be *managed*; (2) undocumented workers fill jobs that American workers do not want and will not take; (3) attempts to remove the millions of undocumented workers from the United States are unfeasible, both in terms of costs and the impact on immigrant communities and employers. From these premises, it follows that some accommodation must be reached with the flow of undocumented immigrants, not because their presence is desired but because their entry and residence is inevitable. Legalization can be justified if one clings to the myth that there is little or no competition between undocumented workers and American workers (no harm/no foul).

This is the story that U.S. liberals tell themselves about immigration reform. To avoid being labeled as supporters of “open borders,” they talk tough about border control while advocating humane policies for those who (inevitably) make it through. From this perspective, temporary worker programs and regularization become “second best” solutions. The real goal—successful control of the border that welcomes lawful immigrants and fully deters unlawful entrants—is unattainable. Like giving clean needles to drug users,

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immigration programs are proposed that seek to ameliorate the difficulties of effective enforcement without giving up on the control paradigm.

It may well be, however, that the Bush proposals signal a change in fundamental thinking about the continued viability of the control paradigm. A large temporary worker program which includes resident undocumented immigrants represents a fairly direct repudiation of the policies adopted in from the mid-1980's through 1996, which were based on the view that illegal immigration could be contained (by sanctions on employers (1986) or by a massive build up of the border patrol (mid-1990s)) and that undocumented workers posed a threat to low wage American workers. (It is thus understandable that line members of the Border Patrol thought that the Bush proposals effectively undermined their attempts to control the border.) That something new may be in the works is also apparent in Big Labor's shift from strong support for employer sanctions in 1986 to a call for the law's repeal in recent years.

The new understanding that may be emerging can be labeled the *continental labor market* paradigm. This perspective begins not with closely patrolled sovereign borders but rather with the view that there exists a labor market which operates across national borders, even if some of the flow is now characterized as legal and some as illegal. Under this model, workers from Mexico can *and should* compete for jobs in the United States; and national policies that favor one's own citizens are unjustifiable market restrictions. The problem, from this perspective, is not the (manifest) failure of control paradigm; the problem is with the paradigm itself.¹¹

This different conceptual framework seems to inform the Bush Administration immigration proposals. It is not openly embraced because it is not yet politically sustainable; and in a post-9/11 world, a paradigm that is in tension with strong notions of national sovereignty faces heavy sledding. Thus the Administration hedges somewhat, stating that its program "will match willing foreign workers with willing American employers, *when no American can be found to fill the jobs.*"¹² But it is doubtful that any temporary worker program will adopt a serious labor market test. The President noted when announcing the proposal that the government would develop "a quick and simple system for employers to search for American workers."

More telling is the outline of the Administration's regularization program. Unlike the 1986 legalization program which provided status to long term undocumented residents, the Bush plan would give temporary work papers to noncitizens already employed in the United States. One might expect that a regularization program linked to the workplace would include a labor market test.¹³ Yet Administration officials explaining the proposal stated that the fact that an immigrant is employed in the U.S. is itself demonstration that no American will take the job—a kind of *ipso facto* labor market test. This is, of course, economic nonsense, as the Administration no doubt knows.

Once the protection of American workers drops away from both the overseas and in-country elements of the temporary worker proposal, it seems clear that we are groping toward the new continental labor market paradigm. The paradigm is also apparent in the novel and important provision that foreign workers will be able to circulate between their countries of origin and the U.S., and perhaps be able to bring their families as well.

What is remarkably astute about the Bush proposal is that it was sold not as a paradigm shift but as a moderate, middle way between the extremes of further toughening of border enforcement and a broad scale amnesty granting undocumented workers green cards. Nevertheless, the Bush Administration proposals go beyond the control paradigm and beyond the rhetoric traditionally used to support amnesty proposals. The crucial language is the linking of "willing workers" and "willing employers." This is the language not of national sovereignty and human rights but of labor markets.

Policy Proposals

Both Democrats and conservative Republicans—still grounded in the control paradigm—understood the fairly radical implications of the Bush proposals. Democrats focused on labor rights, arguing that the proposals appear to benefit employers more than employees and don't go far enough in providing a route to green cards. Conservative Republicans criticized the proposals as rewarding those who had, in effect, violated national sovereignty by entering the country illegally. Given what is at stake, it is hard to predict an outcome. But because temporary worker programs and regularization can be made to fit within both paradigms, one must take seriously the

chance that some kind of legislation could be adopted. Accordingly, it makes sense to describe what an appropriate legislative program could look like.

Temporary Worker Program

Opposition to temporary worker programs have centered on three claims: (1) there is no demonstrated shortage of workers (this is sometimes stated as: any shortage that exists would not exist if wages rose enough to attract American workers); (2) temporary worker programs undercut wages and working conditions of U.S. workers; and (3) temporary workers, in the end, tend to find a way to remain in the U.S., either through a legalization program or illegally.

These claims are accepted parts of liberal dogma and have generally led to Democratic opposition to guest-worker proposals. As noted above, current left support for such programs comes in a back-handed way—as a fix for an imperfect enforcement system (the “clean needles” analogy): better to legalize the flow (despite troubling impacts on low wage workers) than to have migrants dying in the desert.

From the continental labor market perspective, the usual claims look far less strong. Competition for jobs is what free labor markets are about; and if wages and conditions are matters of concern then they should be regulated directly rather than by erecting market barriers.

The Bush proposal, to date, has been somewhat vague on the shape of a new temporary worker program. It appears to contemplate something like the expansion of the existing H visa programs, with employers filing applications on behalf of identified workers—albeit under an expedited process. The Administration has not yet suggested how many new visa numbers would be created. Some have proposed electronic job-posting: employers in the U.S. who could not find domestic workers would put jobs online for which workers from abroad could apply.

The requirement of a specific employer seeking to fill a specific job is the traditional process for allocating work visas—and the process has not worked satisfactorily for years. The “labor certification process” (used for permanent visas) and the “attestation process” (for temporary visas) have never been shown to be effective ways to test whether there are available U.S. workers for domestic jobs. Employers have become adept at manipulating the system while at the same time decrying the amount of paperwork involved.

A more sensible program might be one that is sector-, not job-, specific. That is, the government could identify industry or occupation-specific categories of employment that have traditionally attracted undocumented workers and assign a certain number of visas available for each category. Foreign workers could apply at U.S. consular offices for visas in those categories, without the necessity of a pre-existing job offer. Legalizing this part of the flow plays to the control paradigm by “solving” a significant part of the problem of unlawful migration without authorizing temporary visas for all Mexicans who seek work in the United States. At the same time it recognizes the broader labor market at work.

If the continental labor market model were to overtake the control model, a temporary worker program might take the form of “NAFTA worker visas” which would permit a worker in one state to enter another member state to seek and obtain employment. Again, the government could set the overall number of such visas based on overall labor market needs in the United States.¹⁴ Because these visas would be work visas, the proposal is not one for “open borders.” Visa holders might be given a certain number of days to find work; arrangements could be made to have some part of the wages delivered in the home country; visas could be granted for a term of years. Indeed, the proposal is likely to enhance lawful labor circulation more than the current control model, which paradoxically promotes unlawful residence. Furthermore, a NAFTA worker visa program responds to a developing *economic* integration among nations; it is decidedly not a proposal for *political* integration along the lines of a European Union.¹⁵

Regularization

A number of legalization strategies can be identified:

- an amnesty for long-term undocumented immigrants who entered the United States before a chosen date (the 1986 approach);
- a “rolling statute of limitations,” granting status to immigrants who have been in the United States for a certain term of years (similar to “cancellation of removal” under the Immigration and Nationality Act (INA));
- “earned amnesty” for migrants who have worked in particular industries for a term of years—either granting the green cards now or after continued work in the industry¹⁶;

- the “245(i)” solution—a provision of the INA that permitted undocumented immigrants in the U.S. with legal avenues of family immigration (e.g., marriage to a U.S. citizen) to pay a \$1000 “fine” and be granted status;
- granting temporary worker status to immigrants now illegally employed in the United States (the Bush proposal);
- granting temporary worker status with the possibility of obtaining a green card after a number of years (the McCain/Kennedy approach).

There are two distinct issues here: (1) what groups are covered; and (2) whether regularization grants just a legal temporary status or whether it also grants access to lawful permanent residence (green cards) and eventually citizenship. The Bush proposal provides status just to *workers* and expressly delinks the new status to—what the Administration terms—the “citizenship track.” The proposal, then, contrasts sharply with the 1986 legalization program that granted temporary status generally to long-resident undocumented migrants and authorized green cards within eighteen months. The McCain/Kennedy proposal gives status to workers, but would also provide a (somewhat lengthy) route to permanent resident status. The differences can be represented as follows:

Status	Beneficiaries	
	Workers	Long-term undocumented
Temporary status	Bush plan	X
Access to green card	McCain/Kennedy	1986 legalization

Linking regularization to employment in the United States permitted the Bush Administration to assert that it was not proposing a general amnesty. Indeed, it labeled the entire proposal a temporary worker program, not legalization. As such, it is more consistent with the emerging labor market paradigm than is a 1986-type program. The program has obvious gaps, leaving out family members and others who are not employed. This is hard to justify, and it seems likely that some administrative mechanism will have to be devised that will “tolerate” the presence of family members of legalized workers. This occurred

after 1986 amnesty, with the creation of the “family unity” program; the V visa—granting entry and temporary status to family members of noncitizens eligible for green cards but stuck in adjudicative backlogs—is another example. Advocacy groups have generally not objected to the Bush plan on this front, perhaps recognizing that some accommodation for family will ultimately be made.

The second issue—denial of access to the “citizenship track”—has created greater controversy. As I have argued above, although viewed as a political move to split the difference between the advocates and opponents of an “amnesty,” the Bush proposal in fact points towards the new labor market paradigm—particularly when combined with promises of the right to travel home and back. It was, however, understood in control paradigm terms and attacked by liberals as unacceptable because of the expressed intent not to provide a route to green cards for legalized temporary workers. What will happen, many asked, after six years in temporary status? Surely there will have to be a legalization program, so it might as well be legislated now.

These criticisms seem correct. Perhaps as a matter of political expediency, one might put off enacting the inevitable legalization program; but this move needlessly leaves eligible immigrants uncertain and will undermine the legalization program: why should immigrants come forward and make themselves known to the government if they may be removed at the end of the period of temporary status? That being said, there may be significant public support for the Bush Administration’s position that temporary workers seeking permanent status and citizenship should not have an “unfair advantage over people who have followed legal procedures from the start.” This is not just a Mexico-vs.-the-world issue. There are tens of thousands of Mexicans already in the immigration queue, some of whom will have to wait more than a decade to receive a visa following the legally prescribed procedures.

So the task is to craft a program that promises those who come forward an eventual place on the LPR/citizenship track but not at the expense of those who have played by the rules.¹⁷ The McCain-Kennedy legislation adopts a delayed green card strategy: undocumented workers would maintain temporary status for six years before being eligible for green cards (the number of permanent visas granted appar-

ently would not count towards overall numerical limits applied to immigrants already in the queue). This strategy may be sufficient to overcome objections that undocumented workers are receiving an unfair advantage—particularly if the overall program can be described as a related to employment-based immigration (which traditionally has had far shorter backlogs) rather than family-based immigration.¹⁸

Another possibility is to put temporary workers in the queue based on the date they are granted status. Many are not, in fact, eligible for an entry category because they do not have a close family member who is a U.S. citizen or a lawful permanent resident. But they could be assigned a date based on where they would be in line if they had a qualifying relationship (perhaps, a close relative of a permanent resident alien). This could work as follows: an undocumented worker receives a temporary employment visa on March 1, 2005. He would be matched with persons who have visas approved on that day and then wait in the queue until a visa number is available for those persons. (In the case of Mexicans, this would be about 7 years if the worker is linked to the category for immediate relatives of permanent resident aliens.)¹⁹ When that day arrives, he would receive a green card but that green card would not count toward the numerical limits applied to the category. Thus, the regularized worker would not have an unfair advantage over those who played by the rules; and granting him a green card would not work to the disadvantage of others by using up limited visas (this is also consistent with President Bush's statement that his proposals might require increasing the number of green cards).²⁰ Until a green card is available, the worker would retain temporary status and be able to leave and return to the U.S.

This paper has focused primarily on the domestic U.S. policy agenda because—despite regular efforts to craft a binational approach to immigration—it is more likely than not that U.S. policy will develop unilaterally. Nonetheless, unilateral U.S. policy will inevitably implicate U.S.-Mexican relations because of the dominant role of Mexicans in the U.S. immigration system and the perceived growing importance of Hispanic political power. Furthermore, the

paradigm shift that appears to be underway is likely to push even unilateral policy decisions in a direction that takes into account Mexican interests in the recognition of a continental labor market.

My comments have been largely descriptive, not normative. I must confess some ambivalence about the trend I describe. The creation of a lawfully recognized and state-sponsored North American labor market will not be an unalloyed good. It may well put downward pressure on wages in the United States and further isolate low wage workers who have difficulty advancing beyond the lowest rungs of the ladder of economic opportunity. Furthermore, while Mexican workers may gain access to lawful employment in the U.S., they are not likely to gain social or political rights; and if past experience is any guide, even economic rights and labor protections will be difficult to enforce. To be morally acceptable, the movement toward a new paradigm will need to be accompanied by an ideology of human rights that makes workers more than commodities, more than factors of production. One can hope that the creation of a continental labor market would help to transform U.S.-Mexican relations in ways that promote social justice, but there are no guarantees.

Notes

1. See also Demetri Papademetriou, "A Grand Bargain: Balancing the National Security, Economic, and Immigration Interests of the U.S. and Mexico," Migration Policy Institute, April 2002.
2. In fiscal year 2002, Mexicans constituted 21% of the immigrants granted "green cards" (219,000 of 1,063,732).
3. A recent government report estimates that Mexicans constitute 27% of the legal permanent resident population (3.1 million). The number is higher than the contribution of Mexicans to the annual immigration flow because of low naturalization rates for Mexicans compared to other nationalities. DHS, Office of Immigration Statistics, "Estimates of the LPR Population and Population Eligible to Naturalize in 2003," January 2005.
4. Jeffrey Passel, "New Estimates of the Undocumented Population in the United States," Migration Policy Institute, May 2002 [<http://www.migrationinformation.org/USfocus/display.cfm?ID=19>].
5. It is now clear that policies of the 1980s and 1990s have failed: legalization and employer sanctions have not ended illegal migration: legalization brings new family

- members; employer sanctions fail to deter. Increase in the border patrol and changes in the law have done more to shift the undocumented flow and “lock-in” migrants than to deter the flow or increase deportations.
6. Papademetriou, *supra*.
 7. During the 2004 presidential campaign, John Kerry promised to submit immigration legislation within his first 100 days in office that would regularize the status of undocumented workers and put them on the citizenship track by granting them green cards.
 8. The current Congress has already enacted legislation directed at strengthening immigration enforcement. The REAL ID Act of 2005 (signed into law by President Bush on May 11, 2005) seeks to close loopholes purportedly used by terrorists to gain entry to the United States. Its central provisions (1) tighten the asylum process, (2) restrict judicial review of removal orders, and (3) adopt federal standards to ensure that state driver licenses are not issued to persons unlawfully in the United States.
 9. There is conflicting data on the Hispanic vote for Bush. Earlier reports based on exit polls of a significant gain from the 2000 to the 2004 election have been disputed.
 10. The “Secure and Orderly Immigration Act of 2005,” sponsored by Senators John McCain and Edward Kennedy and Representatives Jeff Flake and Luis Gutierrez, was introduced on May 12, 2005, after this article was written. A synopsis of the major points of the legislation can be found in Appendix A.
 11. The new paradigm is, of course, consistent with the growing economic integration of the two countries under the NAFTA. And it is clear that claims made by supporters of NAFTA that the trade agreement would end illegal migration from Mexico have proven to be manifestly incorrect. It remains a matter of dispute whether the continued high levels of illegal migration are to some degree a product of the NAFTA or whether deeper structural, social and demographic factors are the primary causes. Compare Douglass Massey, “March of Folly: US Immigration Policy after NAFTA,” *American Prospect*, March 1, 1998 with Demetrios Papademetriou, “The Shifting Expectations of Free Trade and Migration” in *NAFTA’s Promise and Reality: Lessons from Mexico for the Hemisphere*, Carnegie Endowment for International Peace: Washington, DC (2004).
 12. This rhetoric continued in President Bush’s State of the Union address on February 2, 2005: “America’s immigration system is . . . outdated, unsuited to the needs of our economy and to the values of our country. We should not be content with laws that punish hardworking people who want only to provide for their families, and deny businesses willing workers, and invite chaos at our border. It is time for an immigration policy that permits temporary guest workers to fill jobs Americans will not take, that rejects amnesty, that tells us who is entering and leaving our country, and that closes the border to drug dealers and terrorists.”
 13. Note that an amnesty patterned on the 1986 model would be based on long-term residence, not employment. So a labor market test would seem unrelated to such a regularization program.
 14. With full integration of a North American labor market, no numerical limit would be set.
 15. Any program for expanded temporary work visas would have to be accompanied by far more serious enforcement of labor standards at all low-wage work places.
 16. See T. Alexander Aleinikoff, “The Green Card Solution,” *American Prospect*, vol. 11, no. 3 (Dec. 20, 1999).
 17. Note that if the program is truly justified in work-based terms, then making green cards readily available to temporary workers might be defensible as simply expanding the number of employment-based visas; if seen as a general amnesty, then those with temporary status might be seen as “competing” with people already on the family-based queues.
 18. This perspective was implicit in the 1986 amnesty legislation, which established far easier eligibility requirements for the agricultural worker legalization program than for the general legalization program.
 19. It might be argued that the person ought to be linked to employment-based categories, which currently have no backlog—but that is probably not the right strategy because those attaining legalization will not be subject to the labor market test that screens out most Mexican workers.
 20. It is possible that while waiting in line, the person would become eligible for another form of relief, such as cancellation of removal. Or an outside limit could be placed on the waiting time by adopting a form of a “rolling statute of limitations.”

APPENDIX A

THE SECURE AMERICA AND ORDERLY IMMIGRATION ACT OF 2005 Summary of Major Provisions*

Legislation sponsored by Senators John McCain and Edward Kennedy and Representatives Jeff Flake and Luis Gutierrez

Submitted May 12, 2005, S.1033 and HR.2330

Title I: Border Security

- Requires the development and implementation of border security initiatives, including information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other actions to secure the borders
- Establishes a Border Security Advisory Committee made up of various stakeholders in the border region
- Encourages the development of multilateral partnerships to establish a North American security perimeter

Title II: State Criminal Alien Assistance

- Allows for funding to pay for additional criminal justice costs associated with undocumented immigrants charged or convicted of crimes

Title III: Essential Worker Visa Program

- Creates a new temporary visa to allow foreign workers to enter and fill available jobs that require few or no skills (the H-5A visa)
- Applicants must show that they have a job waiting in the U.S., pay a fee of \$500 in addition to application fees, and clear all security, medical, and other checks
- Visa is valid for three years, and can be renewed one time for a total of 6 years; at the end of the visa period the worker either has to return home or be in the pipeline for a green card
- Visa is portable, but if the worker loses his job he/she has to find another one within 60 days or return home
- Ensures that employers hiring temporary workers abide by applicable Federal, state and local labor, employment and tax laws
- An employer can sponsor the H-5A visa holder for a green card, or after accumulating four years of work in H-5A status, the worker can apply to adjust status on his/her own

Title IV: Enforcement

- Creates a new electronic work authorization system that will ultimately replace the paper-based, fraud-prone I-9 system, to be phased in gradually
- The Department of Labor will have new authority to conduct random audits of employers and ensure compliance with labor laws; also includes new worker protections and enhanced fines for illegal employment practices

Title V: Promoting Circular Migration Patterns

- Requires foreign countries to enter into migration agreements with the U.S. to encourage the re-integration of migrant workers
- Encourages the U.S. government to partner with Mexico to promote economic opportunity back home, reduce the pressure to immigrate to the U.S. and share health costs

Title VI: Family Unity and Backlog Reduction

- Immediate relatives of U.S. citizens are not counted against the 480,000 annual cap on family-sponsored green cards, thereby providing additional visas to the family preference categories
- The current per-country limit on green cards is raised slightly to clear up backlogs

Title VII: Adjustment of Status for H-5B Non-Immigrants

- Undocumented immigrants in the U.S. on date of introduction can register for a temporary visa (H-5B), valid for six years
- Applicants have to show work history, clean criminal record, and that they are not a security problem to be eligible for a temporary visa
- They will receive work and travel authorization
- Their spouses and children are also eligible
- In order to qualify for permanent status, workers will have to meet a future work requirement, clear

additional security/background checks, pay substantial fines and application fees (\$2000 or more per adult) as well as back taxes, and meet English/civics requirements.

Title VIII: Protection Against Immigration Fraud

- Attempts to eliminate the exploitation of immigrants by law practitioners

Title IX: Civics Integration

- Provides for new money to fund civic and English language instruction for immigrants

Title X: Promoting Access to Health Care

- Extends the authorization of federal reimbursements for hospitals that provide emergency care to

undocumented immigrants; includes H-5A and H-5B workers in the program

Title XI: Miscellaneous

- Includes anti-discrimination protections for H-5A and H-5B visa holders and distributes fines and fees to relevant agencies

Notes

- *This summary is adapted from a more detailed version prepared by the sponsors of the legislation and available on their congressional websites. For full details, see <http://thomas.loc.gov>.

APPENDIX B

**INDEPENDENT TASK FORCE ON IMMIGRATION AND AMERICA'S FUTURE
New Task Force of Prominent Leaders to Take Up Immigration Debate**

May 3, 2005

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As the debate over immigration policy and legislation heats up, the Migration Policy Institute announced today that it is convening a bipartisan panel of prominent leaders from key sectors concerned with immigration to generate sound information and workable policy ideas.

Former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN) will serve as co-chairs of the Independent Task Force on Immigration and America's Future. The panel's work will be directed by Doris Meissner, the former Commissioner of the Immigration and Naturalization Service.

"Immigration issues are complex and wide-ranging in their consequences," noted a background document outlining the scope of immigration issues the Task Force will tackle. It said the lack of progress in immigration reform is, in part, because "immigration policy debates are often poorly informed, polarized and narrow."

Abraham and Hamilton said the Task Force will be a working group in which influential parties with different views and interests can search for common ground. It will focus on four major policy areas: the growing unauthorized immigrant population, immigration enforcement and security issues, labor markets and the legal immigration system, and integrating immigrants into American society. The panel will issue a series of reports and issue briefs, beginning as early as this summer, leading to a comprehensive set of recommendations next spring.

The approximately 25 task force members include high-ranking members of Congress who are involved in shaping legislation; leaders from key business, labor and immigrant groups; and public policy and immigration experts. MPI's partner institutions in the project are Manhattan Institute and the Woodrow Wilson International Center for Scholars.

"Neither national security nor individual liberties can be properly safeguarded in the United States

without sensible and effective immigration laws,” said Hamilton, who was Vice Chair of the 9/11 Commission. “This task force will not only evaluate what is broken in the current system, but outline what kind of immigration policy best supports our national interests in the years ahead.”

“The Task Force has an ambitious agenda, but there is a great deal that needs to be addressed,” said Abraham. “We intend to foster a balanced, informed dialogue on issues of central importance to America’s success as a nation. The comprehensive changes that are needed must be achieved through bipartisanship in the spirit this Task Force represents.”

The roadmap document the panel released today said, “There is a growing gap between our official immigration policies and realities on the ground.” The paper noted the scope of the subject, saying immigration issues span “individual rights, the rule of law, the way our cities and labor markets operate, American competitiveness, national security, and the unique character of the United States in the world.”

The roadmap focuses on four key policy areas:

- **The Unauthorized Population:** This large and growing population “represent a fundamental breakdown in the rule of law....” Most of the adult unauthorized population is working and living in households with some members who have legal status. They have a profound economic impact on U.S. labor markets, communities and their home countries to which they send billions of dollars annually.
- **Immigration Enforcement and Security:** “Tough border enforcement has not been equal to the task of stopping the flow [of illegal immigration].” Current policy “invites people to take great personal risk to defeat border controls for the payoff of ready access to the U.S. labor market.”
- **Labor Markets:** “Using immigration effectively will be a key ingredient for America’s long-term economic prosperity and competitiveness. It will require some fundamental changes in existing immigration criteria.”
- **Immigrant Integration:** “The nation’s immigrant integration policies are ad hoc, fragmentary, underfunded and fall largely to state and local governments.” The most pressing issues relate to the large numbers coming in, geographical concentration and dispersion, skill and education levels, child

poverty, the capacity of institutions that have historically played a role in integration, and the status of the social safety net.

“As a nation, we need to build a broader public consensus on how to reform our immigration system, because the status quo encourages lawlessness, exploitation and economic distortions,” said Doris Meissner. “The disconnect between current policy and reality in the United States has reached a point where new, bipartisan solutions are imperative. This Task Force represents an opportunity for a diverse group of leaders from key vantage points within the body politic to discuss, debate and advance sound policy ideas for immigration reform.”

Spencer Abraham, now a Distinguished Visiting Fellow at the Hoover Institution, served as Secretary of Energy during President Bush’s first term. In the Senate, he was the Chairman of the Immigration, Border Security and Citizenship Subcommittee of the Judiciary Committee. Lee Hamilton is President and Director of the Woodrow Wilson International Center for Scholars. He served as Vice Chair of the 9/11 Commission and as a member of Congress, where he was Chairman of the Foreign Affairs Committee of the House of Representatives. Doris Meissner, an MPI Senior Fellow, was Commissioner of the Immigration and Naturalization Service from 1993 to 2000 and a senior official in the Department of Justice during the Ford, Reagan and Carter administrations.

The **Migration Policy Institute** is an independent, nonpartisan think tank dedicated to the study of the movement of people worldwide. <http://www.migrationpolicy.org>

The **Manhattan Institute** is a think tank that develops and disseminates new ideas that foster greater economic choice and individual responsibility. <http://www.manhattan-institute.org/>

The **Woodrow Wilson International Center for Scholars** is a nonpartisan institution that commemorates the ideals and concerns of President Woodrow Wilson by uniting the world of ideas to the world of policy through supporting pre-eminent scholarship and linking that scholarship to issues of concern to officials in Washington. <http://wwics.si.edu/index.cfm>

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As of May 2, 2005

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Director:

Doris Meissner, Senior Fellow, Migration Policy Institute, former Commissioner, United States Immigration and Naturalization Service (INS)

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Jeanne Butterfield, Executive Director, American Immigration Lawyers Association (AILA)

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