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Foreign Labor Programs as an Alternative to Illegal  
Immigration into the United States: A Dissenting View

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I. Introduction

Illegal immigration into the United States has existed as an issue since the attempts began to regulate entry were initiated in the 1880s. It has, however, only become a prominent national issue since the 1960s. With the annual number of apprehended illegal immigrants now totalling over a million persons a year; with the number of non-apprehended illegal immigrants far in excess of the number apprehended each year; and with the accumulated stock of illegal immigrants estimated to be anywhere from 3 to 12 million persons (the 6-8 million person figures being the most commonly agreed upon range), it is obvious to all who care to know that the existing immigration policy of the nation is in shambles. The causes of the mounting public concern have not only been over the mounting numbers of persons who enter illegally. It also derives from concern over the impact that illegal immigrants have in the short run on employment and income opportunities for citizen workers with whom they compete (most notably minorities, women, and youth) and, for the long run, with the creation and institutionalization of a permanent subclass of rightless persons within American society.

During the late 1960s and early 1970 there were numerous commission reports, congressional hearings and academic writings which detailed both the rising number of illegal immigrants and the incidious nature

of the illegal immigration process on all parties. These efforts contributed momentum to the movement for reform of the existing immigration system. In August, 1977 the Carter Administration announced a set of reform proposals. But despite the urgency of the President's request for action, the Congressional response was authorization for the establishment of the select Commission on Immigration and Refugee Policy in 1978. The Commission report is due in early 1981.

The appointment of the Commission to study the issue is, of course, a standard political ploy to buy time. It gives the appearance of action when, in fact, little of substance is occurring except talk. Generally politicians create such commissions in the hope that by the time they finish their work, the issue will have faded and no action will be needed. But in this case, no one believes for a minute that illegal immigration will recede as a domestic issue by the time the Commission issues its final report. Hence, the essential rationale for the Commission's existence is to allow more time for dialogue over appropriate policy alternatives. The politicians were simply not yet ready to act on President Carter's proposals and they had nothing better to suggest themselves. In addition, most of the usual political coalitions are split over the appropriate remedies to be applied (if any). Even within some groups (e.g., the Chicano Community and the Catholic Church) there are deep internal divisions. This issue has divided both liberals and conservatives. Time was required for new coalitions to develop and a consensus over appropriate remedies to be formed.

Among the many proposals that have been suggested is that there is a need for some type of foreign worker program. The exact format of each

proposal differ. Some call for expansion of the limited labor importation programs that currently is in existence while others argue for programs similar to those used in Europe since the end of World War II. It should be noted in passing, however, that the Carter proposals did not include such a recommendation in its comprehensive package.

The objective of this paper is to outline the existing foreign worker programs in the United States and to review critically the case against those that now exist and those new proposals/calling for more such endeavors.

## II. Past Foreign Worker Programs in the United States

Proposals for a foreign labor program are not new to the United States. There have been several such programs in the past and there are several that are ongoing at the present. Thus, if experience is a short cut to education, there are lessons to be learned from looking at both the past and the present before any evaluation is offered concerning the merits and demerits of similar undertakings for the future.

### The "First Bracero Program"

It is ironic that, only months after the United States enacted the most restrictive immigration legislation in its history until that time--the Immigration Act of 1917, the first foreign labor program was initiated.<sup>1</sup> In response to strong pressure from the large agricultural employers of the Southwest, Congress included in this very restrictive legislation a provision which would allow entry of "temporary" workers who were "otherwise inadmissible."<sup>2</sup> The statute allowed the Secretary of Labor to exempt such persons (Mexicans in this instance) from the head tax required of each immigrant and the ban on any immigrants over age 16 who could not

read. In May, 1917, such an order was issued for the creation of a "temporary" farm worker program. Later it was expanded to allow some Mexican workers to be employed in non-farm work. When the program was announced, so were a number of rules and regulations to govern the program. Ostensibly, these rules were designed to protect both citizen workers and Mexican workers as well as to assure that the Mexicans returned to Mexico after their work was completed. But, as has been the historic pattern, "these elaborate rules were unenforced."<sup>3</sup>

The "temporary" worker program was enacted during the period of World War I. It was partially justified as being in the national defense. This program, which Kiser and Kiser refer to as "the first bracero program" was extended until 1922 which was well after the war had ended in 1918.<sup>4</sup> It was terminated because its rationale as a national defense policy could no longer be justified; because organized labor contended that the program undermined the economic welfare of citizen workers, and because many people believed that there were no labor shortages but only greedy employers who wish to secure economic gains from being able to secure cheap and compliant workers. During its lifespan, 76,862 Mexican workers were admitted/of which only 34,922 returned to Mexico.<sup>5</sup>

#### The Second Bracero Program

With the advent of World War II, the military requirements of the United States and its related manufacturing needs led to charges that another labor shortage existed in the agricultural sector. The farmers of the Southwest had foreseen these developments before the Pearl Harbor attack in 1941. They made two fateful decisions: first, the pool of cheap labor in Mexico was to be tapped to fill the manpower deficit;

second, the federal government was again to be the vehicle of deliverance.<sup>6</sup>

The initial requests of U.S. farmers for the establishment of a contract labor program were denied by the federal government in 1941. By mid-1942, however, the U.S. government had come to favor the program but the government of Mexico balked at the prospect of a formal inter-government agreement. The unregulated hiring of Mexican citizens by foreign nations is prohibited by Article 123 of the Mexican Constitution of 1917. Moreover, in the 1940s the Mexican economy was flourishing; Mexican workers justifiably feared that they would be drafted; there were bitter memories of the "repatriation drive" of the 1930s; and there was knowledge of the discriminatory treatment accorded people of Mexican ancestry throughout the Southwest at the time.

Negotiations between the two governments, however, resulted in a formal agreement, in August 1942. The Mexican Labor Program, better known as the "bracero program," was launched. Mexican workers were to be afforded numerous protections with respect to housing, transportation, food, medical needs, and wage rates. Initiated through appropriations for P.L. 45, the program was extended by subsequent enactment until 1947. Braceros were limited exclusively to agricultural work. Any bracero who was found holding a job in any other industry was subject to immediate deportation. When the agreement ended December 31, 1947, the program was continued informally and unregulated until 1951. In that year, under the guise of another war-related labor shortage, the bracero program was revived by P.L. 78. This program continued to function until it was unilaterally terminated by the United States on

December 31, 1964.

The bracero program demonstrated precisely how border policies can adversely affect citizen workers in the United States--especially, in this case, the Chicanos who composed the bulk of the southwestern agricultural labor force. Agricultural employment in the Southwest was removed from competition with the non-agricultural sector. At its peak, almost one-half million braceros were working in the agricultural labor market of the Southwest. The availability of Mexican workers significantly depressed existing wage levels in some regions; modulated wage increases that would have occurred in its absence in all other regions; and sharply compressed the duration of employment for which many citizen farm workers could find jobs.<sup>7</sup> Citizen farmworkers simply could not compete with braceros. The fact that braceros were captive workers who were totally subject to the unilateral demands of employers made them especially appealing to many employers. The bracero program was a significant factor in the rapid exodus of rural Chicanos to urban labor markets between 1950 and 1970 where they were poorly prepared to find employment and housing.<sup>8</sup>

A lasting effect of the second bracero program was that it exposed hundred of thousands of penniless Mexican workers to the wide array of economic opportunities as well as the higher wages and benefits that were available in the United States economy. It is not surprising that both paralleling the bracero years and immediately following its termination in 1964 has been the accelerated growth in the number of illegal immigrants. Many thousands of these illegal aliens were former braceros. They had

been attracted to the Mexican border towns from the rural interior of central and northern Mexico by the existence of the contract labor program. To this degree, there is an element of truth to the proposition that the United States itself has created the illegal alien problem. By the same token, however, it is grossly simplistic to conclude that the problem would not eventually have surfaced in the absence of the bracero program. The existence of the vast economic differences between the two national economies are simply too great.

### III. Present Foreign Worker Programs in the United States

As the bracero programs are no longer operational, it is instructive to review some of the prevailing policies that permit workers who live in other countries to be employed in the United States. From these experiences it is possible to deduce some of the effects of the new proposals for foreign worker programs.

#### Border Commuters

Border commuters are a sub group of a larger immigration classification known as resident aliens. A resident alien is a foreign born national who applies for permission to live and to work in the United States on a permanent basis. They can retain their own original foreign citizenship. After a period of five years, they may apply anytime to become citizens or they can remain a resident alien indefinitely. A substantial number of resident aliens never elect to become naturalized citizens.

All resident aliens are issued a card from the INS that is officially

known as an I-151 card. In 1975, there were 4.2 million resident aliens registered with the INS.<sup>9</sup> Over 75 percent of them reside in eight states with California, New York and Texas accounting for 49 percent of the total. Persons from Mexico are by far the most numerous of this group--numbering 868,198 (or 21 percent) of the total in 1975. Over 75 percent of all resident aliens from Mexico reside in California and Texas. There is no data available that actually tells how many resident aliens actually reside in the border region but it can safely be said that there are many.

There are two types of resident aliens. One is the larger group of resident aliens who live and who work on a permanent basis in the United States. The other resident alien group works regularly in the United States but resides permanently in either Mexico or Canada. This latter group are called "commuters" or, more commonly, "green carders" (so named because they must show their I-151 cards each time they cross the border and it was originally green in color; it is now blue). Thus, the important distinction is this: all commuters are "green carders" but most "green carders" are not commuters.

At the risk of becoming too confusing, it should be noted that there are also two types of commuting "green carders." One is the commuter who crosses the border on a daily basis. The other is the person who works in the U.S. on a seasonal basis. Generally speaking, the daily commuter is the one whose presence is felt in the along border economy of the U.S.--especially the southern border. The seasonal commuter generally moves much further inland and only returns to his home in Mexico during the off-season of the industry in which he or she is employed. The impact of the seasonal commuter--who may be employed in construction, or farming,



or a tourist industry--is diluted due to the fact that they are employed in jobs scattered all over the nation. The daily commuters, on the other hand, are much more concentrated. Accordingly, they are highly significant in their local labor market impact. David North has aptly observed that the daily "commuter is this generation's bracero."<sup>10</sup>

Due to the extreme differences in the stages of economic development between Mexico and the United States, commuters from Mexico are often willing to work for wages and under employment conditions that are impossible for a person who must confront the daily cost of living in the United States on a permanent basis. The commuter has a real income advantage. Also commuters often act as strikebreakers in labor disputes along the border and, accordingly, are one factor that explains the fewness of unions in the region. A study in 1970 placed the number of daily commuters from Mexico at 70,000 persons.<sup>11</sup> This would mean that roughly one out of every 11 persons employed in 1970 in the U.S. counties along the border were commuters. Obviously, a work force of this magnitude exerts a tremendous impact on these U.S. border communities. Unofficial estimates (there are no official estimates) from INS of the number of daily border commuters in 1978 placed the figure at about 100,000 persons.<sup>12</sup>

Due to the unfair real income advantage that the commuter worker has over the resident worker of the U.S. in the competition for jobs, the legitimacy of their status has been a continuing source of dispute. To understand the nature of this long controversy, it is necessary to understand the evolution of the commuter phenomenon.

Prior to 1917, there were virtually no restrictions placed on immigrants (except those from Asia) who wished to work in the United States.

In 1917 and 1921, temporary restrictions were imposed on immigration and, shortly afterwards, the Immigration Act of 1924 established the first numerical restrictions on immigration. Persons from the Western Hemisphere, however, were not included in the provisions of the Act which required all people entering the United States to be classified as either "immigrants" or "non-immigrants." "Immigrants" were defined as all entrants except those designated as "non-immigrants" who are visiting the country temporarily "for business or pleasure." For a short interval, workers who lived in Mexico but commuted to jobs in the United States were classified as "non-immigrant visitors" who were free to cross the border "for business." By arbitrary administrative decision of the INS in 1927, however, the status of these people was changed to "immigrants." Subsequently, in 1929, the U.S. Supreme Court upheld the INS decision, with the famous ruling that "employment equals residence" (thereby neatly avoiding the permanent residency requirement of the immigration statutes).<sup>13</sup>

There are, however, several differences between a "green carder" and other permanent resident immigrants. "Green carders" may not be unemployed for more than six months without losing their immigration classification; they may not serve as strikebreakers; and they cannot count the time they live outside the United States toward the five years needed to be eligible to apply for permanent citizenship. In reality these differences are of absolutely no consequence. The unemployment restriction is not enforced; the anti-strikebreaker rule is so easily circumvented that it is essentially meaningless; and many "green carders" have absolutely no interest in becoming American citizens.

Surprisingly, the question as to whether or not a "green carder"

must reside in the United States has been the subject of extensive controversy. For over the years, the immigration statutes have changed considerably. Since the Immigration Act of 1965 was passed, it has been charged that the prevailing law actually forbids the practice of commuting since the re-entry rights of a resident alien are limited to a person who is "returning to an unrelinquished lawful permanent address."<sup>14</sup> Before 1965, the INS reasoned that any commuter who had been accorded the "privilege of residing permanently" was always entitled to enter the country. The Immigration Act of 1965, however, altered the previous statutory language. The amended language restricted informal entry to "an immigrant lawfully admitted for permanent residence who is returning from a temporary visit abroad."

Accordingly, one legal scholar has concluded: "No distortion of the English language could result in a finding that the commuter was entering the United States after a temporary visit abroad to return to his principal, actual dwelling place. Rather, the commuter was simply leaving this foreign home and entering the United States to work."<sup>15</sup> He argued that since 1965 the status of border commuters is "not merely lacking in statutory authority" but that the practice is "actually prohibited."

In November 1974, however, the U.S. Supreme Court rejected the aforementioned logic by upholding the INS position that daily and seasonal commuters are lawful permanent residents returning from temporary absences abroad.<sup>16</sup> Essentially, the Court said that it was not going to overthrow 50 years of administrative practices by judicial decree. If the Congress wishes to outlaw the practice of border commuting, it will have to act in a specific legislative manner.

It is worthy of note that the U.S. Department of State has consistently contended that any interruption in the commuter program would seriously harm relations between Mexico and the United States. Former Secretary of State Dean Rusk testified before Congress that the border towns of the two nations "have grown into single economic communities" and that "a disruption in the life of these communities would do real harm to good neighbor relations in the area."<sup>17</sup> Nevertheless, the sanction given to commuters means that the citizen workers of the border region must compete directly with these commuters. As one noted labor market analyst has observed:

The United States worker who competes with the traffic of workers from Mexico is caught in a situation where he pays a substantial part of what the Secretary of State regards as a form of foreign aid to a neighboring nation.<sup>18</sup>

It is true, of course, that these resident aliens who commute could simply move across the border and live in the United States at will. In this sense, they are not truly foreign workers as the term is usually applied. But as long as they do not reside in the United States, they function in a capacity that is identical to being foreign workers. They enjoy the real income benefits of living in Mexico while working in the United States. This gives them an advantage over citizen workers who must compete with them for the identical job opportunities. In reality, the commuters have no intention at all of becoming U.S. citizens. They are only availing themselves of a loophole in U.S. immigration policy that adversely affects citizen workers.

#### "Visitor Workers"

There is another more pernicious system of commuting workers whose status, unlike commuting "green carders," is not debateable. It is simply

illegal. Nonetheless, they pass through the legal checkpoints by the thousands each day to jobs in border towns of the United States. They are not citizens of the United States nor have they any claim to citizenships. For lack of a better name, they can be called "visitor workers." They do constitute a foreign worker program although they are never discussed as such.

The phenomenon of "visitor workers" arises because citizens of Mexico who live permanently in Mexican border towns are accorded special passage privileges to enter the United States at will. The only travel restriction is that they must remain within a prescribed distance of the border. These Mexican citizens request an I-186 card from the INS. These cards are white and, as one can imagine, the bearers are known as "white carders." The I-186 card is for persons known as "legal visitors" or "border crossers." Technically, the bearer of the card can remain in the U.S. for up to 72 hours on any single visit. The bearer of the card is restricted to a radius of 25 miles of the border. The holder of an I-186 card, however, is specifically forbidden from seeking employment or being employed anywhere in the United States.

In fact, however, there is little to stop a "white carder" from working and many do. Prior to January 1, 1969, a white card was valid for only four years. Since that time, however, the cards are no longer dated. As a result, no expiration appears on the card. The INS claimed that the renewal procedures were too time consuming and costly. As can be imagined, the result is that many Mexican citizens regularly cross the border to work within the border perimeter.<sup>19</sup> Given the immense number of people who cross the border check points each day as well as the pressure to

expedite the flow, little can be done by INS officials to police the prohibition against working that is supposedly a condition for receipt of the I-186 card.

Although "visitor workers" are a well known factor to all familiar with the border region, they are the least mentioned and the least studied. Typically these persons are day workers or live-in workers in casual occupations. It is not uncommon for lower-middle income families to have maids in many border cities.<sup>20</sup> As "visitor workers" are illegally employed, they seldom complain about the wages and working conditions. As most of these persons are women with families on the Mexican side of the border, they are greatly restricted in the geographical area in which they work.

The women crowd into occupations that are already in surplus in the local labor market. Although the "visitor worker" is a small component of the daily number of persons who cross the border, it is likely that they still constitute a significant number of persons in the occupations in which they work.

Exactly how many "white carders" there are is a mystery. The INS reports that over 2.2 million cards were issued in the Southwest region between 1960 and 1969.<sup>21</sup> There is no estimate of how many have been issued since then except for the fact that the number each year is in the "tens of thousands." How many of these "white carders" have abused their visiting privileges by seeking employment is unknown. The fact that the statistics of "green and white carders" are either vague or completely

unknown was labeled "astonishing" by the comprehensive UCLA Mexican-American Study Project conducted in 1970.<sup>22</sup>

In passing, it should also be noted that the "white card" is also a popular device for illegal immigrants to use to cross the border. Having entered the United States, it is often the case that the card is simply mailed back to Mexico and the person then moves further north outside the 25 miles zone. This avoids the possibility that the card might be confiscated if the bearer is apprehended. In this event, the person simply indicates that he or she is an illegal immigrant and wishes a voluntary departure back to Mexico. There the original white card is waiting for use again.

#### H-2 Workers

In 1952, the enactment of the Immigration and Nationality Act authorized the Attorney General of the United States, acting through the Immigration and Naturalization Commission of the U.S. Department of Justice to admit non-immigrant persons for temporary jobs "if unemployed persons capable of performing such service or labor cannot be found in this country."<sup>23</sup> This was section H-2 of the Act and, accordingly, the program itself is popularly referred to as the H-2 program. The U.S. Department of Labor (DOL) has the responsibility for the decision as to whether citizen workers are actually available. In making its determination, DOL has devised a system of adverse wage rates and working conditions. These wage rates and working conditions must be provided by any employer who seeks to hire foreign workers under the H-2 program. The purpose of the requirements is to avoid the chances that the program will depress existing work standards. The final entry decision, however, resides with

the Department of Justice. Hence, it does happen on occasion that the Department of Labor is overruled. The size of the H-2 program has fluctuated widely. From a high of 69,000 in 1970, it has declined to about 23,000 in 1978.

As of the period 1978-1979, there have been four rural industries that have been the primary users of H-2 workers.<sup>24</sup> These are the sugar cane industry in Florida (using Jamaicans); apple industry in a number of eastern states (using Jamaicans); the woodcutting industry in Maine (using Canadians); and sheepherding (using Peruvians and Mexicans). There have been several minor programs involving row crop harvesting in recent years in which Mexican workers have been admitted as H-2 workers. Although all of these users of H-2 workers may seem to be rather incidental industries, they all have very powerful political and influential political lobbies as the Department of Labor has regularly found out to its misfortune.<sup>25</sup>

The H-2 program incorporates all of the undesirable features of the aforementioned bracero program. The workers are totally dependent upon the employers. Eligibility to be chosen for the program depends upon one's contacts with certain officials of his government. It is often considered a privilege to be selected. If chosen, the worker can only be assured of the opportunity to return again if his work and attitude please the American employer. This is because the employee may "request by name" a set proportion (usually 50 percent) of this year's H-2 workers to return the next year. In effect, this means that the workers must compete with one another on terms that are very favorable to the employer. If any part of the worker's demeanor or work



unsatisfactory to the employer, the worker may be deported at anytime without an appeal. Given this system, Martin and North conclude "it is little wonder that H-2 aliens are 'hard working and diligent.'"<sup>26</sup>

#### IV. Proposals for New Foreign Worker Programs for the United States

In addition to the previously discussed forms of foreign worker programs, there are, of course, the millions of illegal immigrants who work in the United States. They do constitute a foreign labor program albeit totally unregulated. Officially, of course, illegal immigrants are unsanctioned but, because the immigration policy of the United States is so blatantly tolerant of their presence, it can be argued that they are unofficially both condoned by the government and welcomed by many employers. Certainly, any nation that has a policy that places no penalties on employers for hiring illegal immigrants; that gives voluntary departures back to their homelands of 95 percent of those who are apprehended; and which has an immigration enforcement agency that is chronically underfunded and understaffed, can hardly be taken seriously in its claims to oppose illegal entry.

But because of the mounting number of persons involved and because of the inherent danger both to the illegal immigrants themselves and to the nation as a whole of such an assemblage of rightless persons in its midst, the Carter Administration did offer a comprehensive set of reforms in 1977. As indicated earlier, the Carter proposals did not include any recommendations for a foreign worker program as a potential remedy. Nonetheless, a number of such proposals have been offered by others. It is also known that the Commission on Immigration and Refugee Policy

is pondering such recommendation. Before examining the effects of such a conceptual approach, it would be useful to review a sampling of these proposals.

One proposal is an attempt to draw from the years experience of Western Europe with foreign worker programs. It has been suggested by W. R. Bohning.<sup>27</sup> Addressing only illegal immigrants from Mexico, he says that the United States has a demand for unskilled workers because they are "cheap and industrious."<sup>28</sup> He argues that illegal immigrants are "not a marginal element of the United States labour market" but that "they are necessary for the smooth functioning of the economy as it exists today."<sup>29</sup> In fact, he alleges that there is a "genuine demand" for their work.

Under the Bohning Plan, a Mexican worker--called an "undocumentado"--could get a visa to cross the border and look for a job anywhere just as if he or she were a citizen worker. The worker has three months to find a job. If a job is found, the worker requests a contract for up to 12 months. At the end of the period, the contract could be renewed, "on the spot." If the "undocumentado" can only find seasonal contract work, he or she must return to Mexico but could be requested by name the following year. If a Mexican cannot find work after three months or for a full season, he or she must return to Mexico. Otherwise, they are subject to deportation. When they return to Mexico, they then must compete with all other Mexican workers to get back on the list of visa eligibles. Essentially, the program would work like a union hiring hall similar to that used in the construction and longshoring industries where casual employment is a key employment feature. There is no indication given as to how a person would be selected to become an undocumentado.

While in the country, the "undocumentados" would be accorded all economic and social rights. No seasonal "undocumentados" could bring their families after the first contract renewal. After five years of continuous residence, the "undocumentado" could apply for permanent resident alien status. No other changes in the existing immigration system are suggested.

Another proposal for "a temporary labor program" has been made by Charles Keely.<sup>30</sup> His program would permit foreign workers to be employed "in regions and sections" identified by the U.S. Department of Labor "as in need of labor."<sup>31</sup> The decision would be made after consultation with both employers and labor unions. Temporary workers could be granted immigrant status (i.e., become a resident alien) if they could find work for some set period of time (he suggests a work duration of from 15 to 25 consecutive months). The basis of the plan is that "if a worker worked here, he could build up some rights to settle."<sup>32</sup> Family members would be able to accompany the temporary immigrants and would be entitled to all social programs available to citizen workers. Keely does condition his proposal with additional recommendations for enforcement of existing labor laws and sanctions against employers of illegal immigrants.

A third proposal pertains to the existing H-2 program. It is associated with work done by Edwin Reubens.<sup>33</sup> Actually he sets forth two possible new variants of an expanded foreign worker program: "a new H-2 program" and "an improved H-2 program." With regard to the "new" H-2 program, he suggests the possibility of enlarging the existing program "in certain jobs" for periods one year with renewals of up to three years. After this period the H-2 holder would have to leave the country and join the pool

of job seekers back in his or her country. The next cohort of job seekers would not be admitted until the preceeding group returned as scheduled. The three year period is designed to overcome the fear of labor unions that short term workers are hard to unionize. The prolonged stay is also intended to encourage the foreign workers to join unions and to develop a commitment to the job.

Reubens also suggests that the new H-2 program be limited to the expansion of jobs "to those jobs of low skill, low paid work which currently are often filled by undocumented aliens and are not very attractive to American unemployed workers."<sup>34</sup> He argues that this has been the focus of the guestworker programs of Western Europe. He states that the complaints about these guestworker programs in Europe have been more related "to local social pressures and disparities than to any undercutting of wages or working conditions."<sup>35</sup> Hence, it would be wise to avoid the social pressures by excluding all dependents of the foreign workers. This requirement, he suggests, should be made clear to all applicants for H-2 permits and those who cannot accept this deprivation "should not volunteer for the program."<sup>36</sup> Furthermore, he suggests that the U.S. Department of Labor should "conduct an outreach program in the source countries" to "ensure that appropriate types and numbers of persons are recruited" that will "meet the actual needs of U.S. labor markets."<sup>37</sup> The wage rates would be set by the U.S. Department of Labor to be at "comparative wage minimums" to those paid to domestic workers. As such, these established rates could be used to "sustain present labor standards" and they could be gradually raised in order to be attractive to more citizen workers.

Reubens does state that, if this proposal is intended to absorb the jobs currently held by undocumented aliens, it would have to enroll "hundreds of thousands" of H-2 holders a year.<sup>38</sup> This he notes could easily overburden the existing administrative capability of the appropriate government agencies if any sizable number of persons elected not to go as scheduled. The thrust of his proposal is designed for workers from Mexico although he does not explicitly restrict it to them.

A second option offered by Reubens is to simply improve the existing program. This proposal would keep the program to its present small level of magnitude but improve the existing procedures for recruiting citizen workers before relying upon H-2 workers (by establishing better job information channels, upgrading existing jobs, enhanced mobility, and providing more training) and to tighten the existing certification processes for occupations and industries in need of H-2 workers.

Somewhat parenthetically, Reubens adds that along the Mexican-United States border, "the need for low level workers at certain times of the year" could be more easily met by simply making it easier to secure "green cards" for daily crossers.<sup>39</sup> Obviously, Reubens does not understand that a "green card" holder is a resident alien. As discussed earlier, when such a card is issued, the bearer is entitled to hold the card forever and even to become a citizen after five years. It certainly is a fundamental error to talk about "green cards" as a means of meeting seasonal labor needs.

The Reubens proposal was prepared for the National Commission for Manpower Policy. After considering the proposal, the Chairman of this Commission, Professor Eli Ginzburg, wrote to the Secretary of Labor that he advised "strongly against" any expanded H-2 program.<sup>40</sup>

## V Criticisms of A New Foreign Worker Program

By common agreement of all of the literature, the effect of the presence of illegal immigrants is disproportionately felt in the low wage labor markets of the United States. Most of the illegal immigrants --especially those from Mexico and the Caribbean area--are themselves poorly skilled, poorly educated, and have language restrictions. Even those persons without these characteristics are often downgraded into the same labor market due to their fear of exposure or their inability to produce records of their proper credentials.

It is not necessary to knit-pick the deficiencies of the aforementioned proposals for a new-foreign labor program. Obviously all of them are simply conceptual sketches. None of them have scratched the surface of such critical issues as how the workers are recruited; what are their job entitlements; what are the limitations to be placed on employer prerogatives to limit exploitation; what tests are to be used to test for job certification; and what protections are to be included for citizen workers and for unions to assure that prevailing standards are not undermined. Moreover none of them even remotely touch the fact that the INS is in a current state of total administrative chaos.<sup>41</sup> The INS cannot handle the paperwork associated with the legal immigration system--not even to mention illegal immigrants. It is inconceivable that INS could administer a new foreign worker program. All of these matters must, of course, be settled long before such a foreign worker program is initiated. But to anyone familiar with the history of regulatory efforts associated with the H-2 programs, the bracero programs, and the various border commuter systems knows that the task will be--to put it mildly--formidable.

Putting aside these administrative matters, the major criticisms of foreign worker programs are their conceptual design, their impact, and their magnitude. All of these considerations are sufficiently serious enough to counter any alleged merits that they might have.

The rationale for proposals for new foreign worker programs is the existence of illegal entry on a massive scale. It is not based on the existence of demonstrated need. Unemployment rates in the United States are the highest of any of the Western industrialized nations. Moreover, the unemployment rates among Hispanics, blacks, women, and youth far exceed the national aggregate unemployment rates. All of the proposals (as well as the existing foreign worker programs discussed earlier) are designed exclusively for recruiting more workers for the unskilled and semi-skilled occupations in primarily low wage industries. These are precisely the same secondary labor market jobs in which those citizen workers with the highest unemployment rates are already found. No one is suggesting that there be a foreign worker program to supply more doctors, professors, lawyers, or business executives. For not only would such proposals lead to charges of a "brain drain" from emerging nations, but, also the domestic opposition of these privileged and protected workers in the primary labor market could be counted upon to kill any such idea at the moment of its conception. Rather, it is because it is a program that may benefit the privileged but which will adversely affect opportunities for the less fortunate and the least politically organized groups in American society that such proposals are put forth. The proposal for a foreign worker program is clearly class biased.

There is no evidence at all that citizen workers will not do the work

that illegal immigrants now do. It is alleged, without one shred of empirical evidence in the works of Piore, Cornelius, and Bohning, to mention only a few, that this is the case.<sup>42</sup> But none of these works cite a single occupation or industry in which they can contend that the vast majority of workers in the same occupations are not U.S. citizens. Hence, it cannot be the type of work that makes illegal immigrants attractive. Rather, it is the wage rates and working conditions that determine worker availability. Studies can show selected labor markets in which illegal immigrants have made a collective impact on certain occupations and certain industries. They can find employers who hire illegal immigrants and who contend that U.S. citizens are increasingly difficult to find. But it is just as valid as a counter argument to say that it is precisely because of the presence of sizeable numbers of illegal immigrants that citizen workers are more difficult to recruit. In other words, these employer arguments are a self-fulfilling prophecy. It is because illegal immigrants crowd into certain industries that citizen workers are forced to withdraw. No citizen worker can compete with illegal immigrants when the ground rules are who will work for the least pay and under the most arbitrary types of employment. Yet it is exactly for these same occupations and industries that foreign worker programs would be designed to supply additional workers.

As every economist knows, it is impossible to separate the employment effects from the wage effects whenever there is a change in the supply of labor.<sup>43</sup> Hence, the presence of foreign workers would not only affect job opportunities but also affect wage levels. It is the wage effects that are part of the attractiveness of illegal immigrants to American employers.



These employers are able to obtain workers at less cost than would be the case in their absence. This does not mean that most employers exploit these workers by paying wages below the federal minimum wage. Obviously, some malevolent employers do pay lower than legal wages but this is clearly the exception in the present era. Available research shows that most illegal immigrants do receive at least the federal minimum wage and many receive much more.<sup>44</sup> A foreign worker program, therefore, would not serve as a means of raising wages to the established federal wage floor since most illegal immigrants are already at that level or beyond. Rather, its presence would modulate against pressures for wages to increase in the low wage labor over time.

Most of the wage exploitation that occurs at present is simply the result of the fact that illegal immigrants are available at wage rates that are lower than would be the case if the same employers had to hire only citizen workers. This situation, of course, can only be exacerbated by the additional supply of foreign workers. This is exactly the impact that the braceros had in the past. The thorough report on the bracero program by the President's Commission on Migratory Labor found that for agricultural workers "that wages by States were inversely related to the supply of alien labor."<sup>45</sup> Likewise North's comprehensive study of the commuters found that the minimum wage was essentially the prevailing wage for most commuters.<sup>46</sup> As the border region contains the three poorest standard metropolitan statistical areas in the country (Brownsville, McAllen and El Paso) plus the fact that the employment rates all along the border are consistently in double digits and labor force participation rates (especially among women) are among the lowest in the nation, it is obvious what the employment

and wage effects of a foreign worker program will be upon citizen workers in the secondary labor market.

But the real case for exploitation is derived from the fact that foreign workers can be expected to be docile workers. Citizen workers know that they have job entitlements. These entitlements include minimum wage protection but extend into a number of other areas such as overtime pay provisions, safety requirements, equal employment opportunity protection, and collective bargaining rights. It is these additional employee entitlements that an employer can often escape if foreign workers are available. For technically even though foreign workers (and illegal immigrants too for that matter) may be covered by these work standards, their presence creates a situation in which these safeguards cannot be guaranteed in practice. For the enforcement mechanisms for most of these laws are based largely upon employee complaints or actions. It is highly unlikely that foreign workers will know their rights. Even if they are so knowledgeable, they will probably be reluctant to do anything about abuses for fear of losing their jobs and, relative to the jobs alternatives available in their native lands, they may not even perceive the violations are being exploitive.

As for unionization, the occupations in which illegal immigrants and commuters are concentrated are rarely unionized at present. The availability of foreign workers will virtually guarantee that unionization will not occur in these labor markets. Hence, a foreign worker program would definitely function as an anti-union device.

Thus even if the wage rates that an employer must pay are identical for foreign workers and for citizen workers, the foreign workers will be

preferred. It is the knowledge that foreign workers will be less likely to make demands for job rights or to join unions that will make them highly prized. Thus, it is the non-economic factors that will provide the crucial advantages for employers as they now do for the employment of illegal immigrants.

Another flaw in these proposals is their intended magnitude. The only way that a foreign worker program can do anything to reduce illegal immigration is if the program is significant in size (at least in the 500,000 to 750,000 person range). But the larger the program, the greater the certainty of adverse impact on citizens. On the other hand, if the scale of the program is small then where will be the deterrence to illegal entry? There must be some limitation on the size of the program and, if there is, what will stop others who are not selected or whose period of work has expired but they wish to remain from either coming or remaining? All of the unresolved features of the present system would remain issues (i.e., employer sanctions, the proper identification question, amnesty, the use of the voluntary departure system, and the budget and manpower deficiencies of the INS). A foreign worker program does not resolve any of the current policy issues but it certainly adds a host of new ones. Certainly, no move should be made to even consider a foreign worker program until all of the ancillary questions are settled.

Also, all of the discussions of the foreign worker option assume either implicitly or explicitly that the program would be a bilateral arrangement with Mexico. This has certainly been true of past experience. But times have changed in both Mexico and the United States. Indeed, it is no accident that the momentum for immigration reform began in the 1960's and 1970's when there was heightened domestic interest in civil rights and

the eradication of poverty.<sup>47</sup> The point is that illegal immigrants are streaming into the United States from almost every country in the world. President Carter's message that accompanied his immigration proposals stated there were 60 countries that are "regular" sources of illegal immigration.<sup>48</sup> For although about 90 percent of the illegal immigrants who are annually apprehended are from Mexico, this is merely the result of the concentration of INS apprehension techniques on undocumented entrants in the Southwest. It is doubtful if Mexicans compose as much as 60 percent of the total stock of illegal immigrants in the United States. There are millions of other illegal immigrants who are not Mexicans. Generally they enter the country with proper documents but they overstay their visas. Many of these people face economic deprivation and political persecution situations that are worse than those conditions confronting Mexicans. In fact, compared to many other countries in the Caribbean, Central America, and South America, life in Mexico is considerably better.<sup>49</sup> Many of these countries in the Caribbean--as Haiti, the Dominican Republic, Jamaica, Barbados, and Trinidad--have large black populations. All of them--and others that could be cited--are regular sources of "visa abusers". In many instances the question is not why do so many of them seek entry into the United States but, rather, why do any of them stay behind given the bleak futures that confront them. The same can be said of Asians from Hong Kong, Korea, the Phillipines, and Singapore which are also major sources of illegal immigration. Hence, it is very unlikely that any foreign worker program could be restricted to workers from Mexico. If it was, it would mean that it would be a racist proposal and it would also mean that it would have nothing to offer as a solution to illegal entry from other nations of the world. Thus, the

scale of such proposals is again an issue.

In addition, the proposals for a foreign worker program simply neglect all of the experience that the United States has had (as well as in many cases in Europe) with foreign worker programs. Namely, when workers come from economically less developed countries to a country like the United States, they are made aware of opportunities that for many is beyond their wildest imagination. The relatively higher wages and the broader array of job opportunities will create, as they have in the past, a tendency for many to remain. It also sets up a situation in which children are born and marriages occur. Both of these actions involve potential claims for citizenship. In the United States, with its multi-racial and multi-ethnic group population, it is far more likely that these pressures will occur than would ever be true in Europe. Rather than reduce the costs of uncontrolled immigration to American society, a foreign worker program will only add to the problem.

#### VI. Concluding Observations

H. L. Mencken once quipped that "for every complex problem there is always a simple answer--and it is always wrong." Proposals for a new foreign worker program are no answer to the complex problem of illegal immigration. To be effective, it would have to be substantial in size; but if it were substantial in size, it would clearly have an adverse impact on segments of the domestic labor force. Furthermore, even if it were conceptually feasible, the INS as it is now staffed and budgeted is totally incapable of administering any such a program without it becoming a fiasco. It is also very doubtful that the Department of Labor could handle such a program.

A foreign worker program would undoubtedly increase illegal

immigration by exposing more foreign workers to the economic attractions of the American labor market. It would also adversely affect job and income opportunities for many persons in the American economy who have the least capability of defending themselves from their competition. It is not surprising, therefore, that a 1979 conference on "Jobs for Hispanics"--sponsored by the Labor Council for Latin American Advancement and attended by both Hispanic trade unionists and Hispanic community groups from across the country--took a strong and unanimous stand against a foreign worker program. In their conference manifesto, called the "Declaration of Albuquerque," they called for a number of policy changes that would be beneficial and protective of illegal immigrants. But with respect to the idea of a "guest worker" program, they emphatically stated:

The federal government should not include any type of 'Bracero' program or foreign labor importation, as a solution to the current problem of undocumented workers.<sup>50</sup>

Foreign worker programs are only of interest to employers as a means of either reducing their costs of production or of enhancing employer control over their workers.<sup>51</sup> Foreign workers are attractive only because of their dependency upon their employers. Citizen workers who compete with foreign workers will find, as in the past, that their existing work conditions either become frozen or decline but under few circumstances will they improve. Efforts to establish unions are thwarted or, at a minimum, made more difficult. These callous motivations should not be rewarded.

A foreign worker program will in no way diminish the need to reform the existing immigration system of the United States. Until the system is made capable of accomplishing its stated goals of regulating the flow

of immigrants into the United States, illegal immigration will flourish regardless of the existence of a foreign worker program. But if such a program was enacted, it might deceive some people into thinking that an answer has been provided. Indeed, a foreign worker program has great political attractiveness just because it gives the appearance of being a remedy while avoiding the necessity of taking the hard actions that are mandatory to the achievement of an end to illegal immigration.

In 1979, the United States admitted over 600,000 legal immigrants. This is a commendable attribute of American society. For not only does the number exceed the total legal immigrants admitted by all of the remaining nations of the world combined, but also they were admitted on a totally non-discriminatory basis. This accomplishment should not be allowed to be tarnished by the continued flow of millions of other persons who have flaunted the legal system by entering illegally. The proposals for a foreign worker program must be recognized as being simply a placebo. They offer an imaginary remedy to a real problem. But such an idea is not neutral in its long term effects since it can only make an already bad situation much worse. What is offered as a tonic is actually a toxic.

### Footnotes

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10. David S. North, The Border Crossers: People Who Live in Mexico and Work in the United States (Washington, D.C.: Trans-Century Corporation, 1970), p. 72.
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16. Saxbe V. Bustos, 419 U.S. 65 (1974)
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18. Fred H. Schmidt, Spanish Surnamed American Employment in the Southwest Washington, D.C.: U.S. Equal Employment Opportunity Commission, (1970), p. 62.
19. E.g., see discussion in Gilberto Cardenas, "Manpower Impact and Problems of Mexican Illegal Aliens in an Urban Labor Market" Unpublished Ph.D. dissertation at the University of Illinois, (December 1976), p. 31.
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35. Ibid.
36. Ibid.
37. Ibid.
38. Ibid., p. 60
39. Ibid., p. 69
40. Letter to Secretary of Labor Ray Marshall from Eli Ginzberg, Chairman of the National Commission for Manpower Policy, dated May 1, 1979, p. 2. [copy of letter in possession of the author].
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43. Walter Fogel, Mexican Illegal Alien Workers in the United States, Monograph #20 (Los Angeles: Institute of Industrial Relations, University of California at Los Angeles, 1978), Chapter VI and VII.
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