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Conference on the Undocumented Worker  
Taos, New Mexico  
August, 1978

## The Labor Market Impact of the Undocumented Worker

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### I. Introduction

Few subjects more fundamentally touch the essence of the American experience than the topic of immigration. An ethnically heterogeneous population in search of a homogeneous national identity has been the history of the United States. In its evolving and often controversial role, immigration policy has served as a focal point for numerous components of public policy. It has been instrumentally involved in such diverse areas of public concern as human resource policy, foreign policy, labor policy, agricultural policy, and race policy. Yet until only recently, immigration policy itself has been among the least examined of all public policy measures. Changing events since the 1960's have dictated that this neglect can no longer be tolerated.

The renewed policy interest in the topic in the 1970's has triggered a round of fierce and often emotional public debate. For this reason, it is difficult for any interested citizen, public official, or scholar to gain an objective perspective of the issue. Attention is constantly distracted by peripheral issues away from what should be the central point of inquiry: recognition that the prevailing immigration policy

of the United States is unenforceable. As such, immigration policy is increasingly being perceived as a threat to the welfare of the domestic labor force. The relevant issue for public concern is whether the policy of the nation should remain impotent. Or, should the United States, as is the case with most other nations of the world, implement an immigration policy that is capable of accomplishment of its stated purposes?

## II. Components of Immigration Policy

Immigration policy consists of an evolving and complex set of statutory laws, administrative rulings, and court decisions. The federal agency responsible for the administration of the immigration statutes is the Immigration and Naturalization Service (INS) of the U.S. Department of Justice.

With the enactment of the comprehensive Immigration Act of 1965, substantial changes were made to the previous body of immigration policy. The Act was designed primarily to end the ethnocentric policies of earlier legislation.<sup>1</sup> Little consideration was given to possible labor market ramifications.<sup>2</sup> The new immigration system continued the past policy tendencies of accentuating family reunification as the highest entry priority category. Only ancillary attention was given to the other two stated policy objectives

which are to be a means to fill demonstrable skill shortages and to accommodate a limited number of political refugees. For the first time, an aggregate ceiling of 120,000 was imposed on immigration of people from the Western Hemisphere but no ceiling was set at the time on individual countries. For the Eastern Hemisphere, however, the ceiling was placed at 170,000 with a 20,000 person maximum allowed from any one country. The total hemisphere ceilings (290,000 persons) are greatly exceeded due to quota exemptions for parents, spouses, and children. Mexico became the major source of legal immigrants. It averaged about 54,000 immigrants a year between 1966 and 1976, with the average increasing to about 66,000 immigrants a year between 1972 and 1976.<sup>3</sup> Effective January 1, 1977, the statutes were again amended to set a ceiling of 20,000 per country on all Western Hemisphere nations.<sup>4</sup> Although this action seems fair on its face (since it applies the same quota to all nations), it affects legal immigration from Mexico much more than any other country.

### III. A General Overview of the Issues

As the nation's formal immigration policy has developed, it has passed through three distinct eras: no restriction of any kind (prior to 1888); numerical restriction based upon ethnic discrimination (from 1888 to 1965); and numerical

restriction with ethnic equality (since 1965). With the legal and numerical restrictions, of course, has come the problem of illegal immigration. The two issues are, of necessity, inter-related and must be discussed together.

Under the 1965 act, the total number of legal immigrants admitted to the United States has averaged about 400,000 persons a year (or twice the annual flow for the 41 years prior to its enactment).<sup>5</sup> About 60 percent of the legally admitted immigrants go directly into the labor force.<sup>6</sup> Accordingly, legal immigration has accounted for about 12 percent of the annual increase of the civilian labor force since 1969.<sup>7</sup> Allowance for emigration would reduce this figure but it is not known by how much. These percentages, of course, do not include any estimates of the influence of illegal immigration.

Given the size of the annual inflow, it is surprising that prevailing immigration policy gives virtually no attention to any possible labor market ramifications that might accrue from legal immigration. In accord with its generally humane character, the present legal system gives highest priority to family re-unification. In 1975, for instance, 72 percent of all visas were granted on the basis of family reunification.<sup>8</sup> In addition, 9 percent of all visas issued that year were given to political refugees. For the small remainder a nominal effort

is made to see that legal immigration does not adversely affect the domestic labor market. The Secretary of Labor has since 1952 been empowered to block the entry of legal immigrants if their presence would in any way threaten prevailing wage standards and employment opportunities.<sup>9</sup> The Act of 1965 bolstered the permissive language of the earlier legislation by making it a mandatory requirement that non-family related immigrants who are job-seekers receive a labor certification.<sup>10</sup> But even in these few cases, there is no probationary categories that were the conditions of their certification. Perhaps even more revealing of the lack of concern for local labor market impact is the fact that about 40 percent of all certifications since 1970 have occurred after the applicant had already entered the country and secured a job.<sup>11</sup>

The United States is today only one of about a half dozen nations which is annually accepting substantial numbers of legal immigrants. It is certainly among the fewer number which admit persons impartially with respect to race and ethnic background. Thus, on paper, the legal immigration system appears to be both reasonable (in the numbers of persons it annually admits), fair (in terms of its ethnic impartiality), and humane (in the dominance of family reunion and refugee accomodation over labor market impact considerations).

Yet the legal immigration system of the United States has been rendered a mockery. Illegal immigration has become the major avenue of entry. In 1976, for instance, a total of 875,915 illegal aliens were apprehended by the INS. This figure represents a 500 percent increase over the figure of a mere decade earlier. To be sure, these apprehension figures are artificially inflated due to the fact that many persons are caught more than once. On the other hand, the vast majority of illegal aliens are not caught. It is believed that for every person apprehended, four or five are not.

When the annual numerical flow of legal immigrants is combined with conservative estimates of both the annual or numerical flow and the accumulated stock of illegal immigrants, it is apparent that the United States is in the throes of the largest infusion of immigrants in its history. The combined magnitudes--even using conservative estimates--means that there must be significant labor market implications.

#### IV. The Specific Labor Market Issues

As can be implied from the preceeding overview, the legal immigration system has become a highly mechanistic, case-by-case, process in which family reunification has become the principal characteristic. Literally no concern

is manifested by the system as to the ability of local labor markets to absorb the new immigrants or of their individual ability to adapt to its local needs.

If the flow of legal immigrants to the United States were distributed somewhat equally about the nation, there would be no particular problem concerning the absorption of the quarter of a million legal immigrants who annually enter the civilian labor force. Unfortunately, this is not the case. Legal immigrants have tended to concentrate in six states-- California, Florida, Illinois, New Jersey, New York, and Texas. These six states account for about 75 percent of the total annual flow.<sup>12</sup> Actually the concentration is even more specific as California and New York received over half of the total. Moreover, in each state, the immigrants have flocked to the large urban areas. Hence the impact of legal immigration is highly concentrated in a few local urban labor markets of a few states. It is this concentration of impact that is the critical policy issue. Many of these urban labor markets have severe unemployment and poverty problems (e.g., New York City, Chicago, Albuquerque, El Paso, San Antonio, San Diego, and Los Angeles). The fulfillment of national immigration goals should not be allowed to adversely impact selected labor markets. As the system currently does, it is essential that special adjustment programs be made to assist these localities to overcome these nationally imposed local problems.

As for illegal immigration there is no simple way to discuss the complex issue of labor market impact of illegal immigration. It is multi-faceted in its causes, characteristics, and corrective remedies. In approaching the issue, it is necessary to answer several questions of paramount importance. Among these are: why do they come? how many people are involved? how is their impact felt? who is adversely affected? and what are the long run consequences?

1.) Why do they come?

A complex set of factors is responsible for the growth of illegal immigration. Masses of people--such as those leaving Mexico and the Caribbean area--leave the familiarity of their homeland and go to an unknown land only if both push and pull pressures are operative. In most instances the "push" factors derive momentum from the related issues of overpopulation, massive poverty, and high unemployment. Of increasing significance are the pervasive structural changes that are occurring within the labor forces of many underdeveloped nations, changes that stem from technological developments and rural-to-urban migration. Likewise, there are the strong economic "pull" factors that emanate from the United States. The relatively higher wages and broader array of available job opportunities of the American economy function as a powerful human magnet.<sup>13</sup>



Related to these forces are several other considerations. American employers are often willing to tap this pool of scared and dependent workers. Prevailing immigration law does not place any penalty upon the act of employing illegal aliens. Because of the "Texas proviso" in the Immigration and Nationality Act of 1952, employment does not constitute the illegal act of harboring.

As for the aliens who have entered the country illegally, 95 percent of those apprehended are given "a voluntary departure." They are simply returned to their homeland as quickly as possible and often at the expense of the government. Any law under which 95 percent of the violators are not punished can hardly be taken seriously as a deterrent.

Moreover, the INS, which has the responsibility for enforcement of the immigration statutes, has a force and budget that are miniscule relative to its assigned duties. As of 1977, there were fewer than two thousand border patrol officers plus 900 hundred additional inspectors and investigators for inland duty. Only a fraction of these are actually on duty in any given eight-hour shift of any given day.

## 2.) How many people are involved?

Obviously, a basic concern to any discussion of the labor market impact of illegal immigration is the number of

persons involved. But by the illegal nature of the movement, precise data will never be available. Only figures pertaining to apprehensions exist and even they are suspect due to the numerous duplications. The staggering growth of apprehensions over the past decade with virtually no increase in enforcement capability does imply that the direction of change is toward increasingly larger numbers. But public discussion of this issue should not be diverted by academic quibbling over the actual numbers.

It makes little conceptual difference whether the stock of illegal immigrants is 3, 6, 9, or 12 million persons. All of these numbers have been cited in various official reports and research studies. Actually, the precise number is irrelevant is one concedes--as everyone familiar with this issue does--that the number of persons involved is substantial and that the direction of change is toward annually increasing numbers.

Frankly stated, there will never be any better data available on this question. Secretary of Labor Ray Marshall has even been quoted as saying that there is little need for more research on this question.<sup>14</sup> He is correct in the sense that the illegal character of the entire process forestalls the possibility that much will ever be known about the actual number of persons involved. Estimates and anecdotes

are all that is going to be available. But before one despairs that little can be learned because the data is so poor, it should be realized that this is also the case with respect to most of the major social problems of the day. Reliable data are unavailable about the size of energy supplies, local labor market conditions, crime, health, and mental health, to name only a few. The problem of illegal immigration is real and it is going to get much worse in the near future. Illegal aliens themselves are streaming into the United States from almost every nation in the world. President Carter's message on illegal immigration in August 1977 stated that "at least 60 countries are significant regular source countries."<sup>15</sup> Although illegal entrants are often discussed in terms of being only an issue of Mexicans, it is likely that they account for no more than half of the annual flow of illegal aliens into the country.<sup>16</sup> Thus, illegal immigration is truly a national issue and it involves persons from many ethnic backgrounds.

### 3.) How is their economic impact felt?

Despite the contrary views of many of its practitioners, economics is not a precise science with laws that are universally and mechanistically operational. There is much room for human manipulation. On the other hand, there is general truth to the laws of supply and demand. When the

supply of anything increases, the effect is either to reduce the price or to restrict the rate of price increase from what it would have been in the absence of the increase in supply.

In fact, it is precisely because of this phenomenon that the labor supply in the Southwest has historically been kept in surplus. Conscientious human efforts have been made to keep wages low, to keep incomes depressed, and to keep unionism to a minimum by using waves of legal immigrants (from China, Japan, Mexico, and from Europe as well), braceros (from Mexico), border commuters (from Mexico), and now illegal aliens (mainly from Mexico but by no means exclusively so). The objectives of these efforts have been generally effective. The poorest metropolitan areas in the nation are found in South Texas (i.e., the Brownsville SMSA and the McAllen SMSA). Among the poorest rural counties in the United States are many in the border regions of the Southwest. Unemployment rates all along the border are regularly among the highest in the United States. These rates are frequently in double digits. It is no accident that of the 80 labor markets in the nation in 1977 that are listed by the U.S. Department of Labor to be "major labor areas of substantial unemployment," 14 of these (or 18 percent) are in the four states that comprise the border with Mexico.<sup>17</sup> Similarly, unionism in the Southwest

is hardly known outside of California, and even there it has had its organizational problems in Southern California due to the availability of hordes of willing strikebreakers. The effect of past immigration policies in the Southwest has been to maintain a labor surplus in selected occupational categories.

But even in the case of those illegal immigrants who do migrate back and forth between Mexico and the United States, the important point is not how many months illegal immigrants work on any single excursion to the U.S.<sup>18</sup> Rather, the crucial question is whether they again return to the United States and how often. Moreover, many of those persons who do return periodically to their homelands work in seasonal industries in the United States (e.g., in agriculture, construction, and tourism). As these are industries in which the jobs are only seasonably available to citizen workers too, the employment impact in these industries is the same as if the illegal aliens remained in the United States year round.

#### 4.) Who is adversely affected?

All of the research on the characteristics of illegal aliens show that the major reason that they come is to find jobs.<sup>19</sup> The evidence also indicates that they are largely successful in their quest. Some of them hold jobs that are standard. They are useful largely because they are easily exploitable (i.e., people who will seldom complain and who

are grateful for anything they receive). The vast majority of illegal aliens, however, are not exploited in this sense. But they do work disproportionately in the low wage labor market. Other illegal aliens work in good paying jobs in manufacturing and construction. Each of these situations needs to be discussed separately.

For those who work under exploitive conditions, it is likely that they do not take jobs that citizens would tolerate. Yet this is certainly no excuse for the perpetuation of their presence. If it is wrong for citizens to work under unfair working conditions, it is also wrong for illegal aliens to do so. It is grossly unfair for employers who comply with prevailing labor standards to have to compete with employers who do not.

With respect to the low wage labor market (i.e., in the range of the Federal minimum wage and slightly above), it must be realized that there are millions of citizens who are confined to this sector as well. With the already legislated schedule of annual increases in the minimum wage through 1981, it is very likely that the number of citizens in this group will increase in the next few years. This is especially the case with young workers whose unemployment rates are already so high that they constitute a major national problem.

In many of the local labor markets in which illegal aliens are known to be present in substantial numbers, it is likely that the presence of illegal aliens explains why certain industries remain low wage industries over time. Their presence also explains why many employers in these same industries attempt to justify the employment of illegal aliens by claiming that citizen workers cannot be found to do the work. No American worker is capable of competing with an illegal alien when the end result of the competition depends upon who will work for the lowest pay and longest hours and accept the most arbitrary set of working conditions. Hence, it is a self-fulfilling prophecy for employers to hire illegal aliens and then to claim simultaneously that no citizen workers can be found to do the same work. In the local labor markets where illegal aliens are present all low income workers are hurt. Anyone seriously concerned with the working poor of the nation must include an end to illegal immigration as part of any national program of improved economic opportunities.

One way to increase the job opportunities and the income rewards for the working poor population is to reduce the uncontrolled supply of new entrants into the low wage sector of the economy. Many of the jobs performed by low wage workers are essential to the operation of our economy. Farm workers, dishwashers, laborers, garbage collectors, building cleaners, restaurant employees, gardeners, maintenance

workers, to name a few occupations, perform useful and often indispensable work. The tragedy is that the remuneration is so inadequate. This is largely due to the fact that there is such a large pool of available persons. Most of the tasks performed by low wage workers are not going to go away if wages increase. One way to see to it that wages do increase and that unionization becomes possible for low wage workers is to reduce the unfair addition of millions of illegal aliens into this selected sector of the economy. If illegal aliens were flooding into the legal, medical, educational and business executive occupations of this country, this problem would have received the highest national attention and it would have been solved by now. But because it is the blue collar and service workers occupations who must bear the burden of the competition, the issue remains largely unaddressed.

The injustice of unequal enforcement of the law is compounded by the enforcement policies of the Immigration and Naturalization Service itself. Namely, for years the INS has followed the operational tactics of purposely focusing its attention on the apprehension of illegal aliens in "better-paying jobs" rather than in the low wage sector of the economy.<sup>20</sup> It is precisely those helpless citizens who work in low wage industries who require the protection the most from the INS that are again the most neglected by their own government.



As for better paying jobs, no one will debate that the illegal aliens employed in these positions cause a displacement effect. These are positions for which there are many citizen job seekers. If an illegal alien holds one of these jobs, there is a citizen worker who does not. Yet even under these circumstances, illegal aliens are often "preferred workers" since they are less likely to join unions, or to complain about denial of equal employment opportunity, or to make other strong demands upon employers. Because of their unfair competition, it is in this sector that the INS is most vigilant in its limited enforcement activities. Helping the most privileged of our society has always been a popular role for government agencies. It is only when government helps those who really need it that questions about government's proper role are asked. This inequality of attention needs redress.

5) What are the long run consequences?

Aside from the obvious adverse effects of illegal aliens on employment and income opportunities for citizen workers, there are other serious long run consequences. The nation is rapidly accumulating a growing subclass of truly rightless persons within our society and institutionalizing their deprived status. Although technically able to avail themselves of many legal rights and protections, few illegal aliens feel free to do so. In addition, they and their family

members are increasingly being legislatively excluded from much of the basic social legislation in this nation. These exclusions vary from the Federal level where illegal aliens are excluded from receipt of Supplemental Security Income, Medicaid, and Aid to Families with Dependent Children, to individual state exclusions from unemployment compensation programs, and even in some cases, from attending public schools without being charged tuition. At all levels, illegal aliens are denied the political right to vote as well as being excluded from the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964. Certainly the growth of a sub-class of rightless illegal aliens is in no one's long term interest. It is a time bomb. The adults may be grateful for the opportunities provided them, but it is certain that their children will not be nor should they be.

Some short-run private sector gains may be realized by the hiring and often by the exploiting of alien workers. But in the long run the presence of a growing number of workers (and their dependents) who are denied minimum political, legal, and job protections, who are under the constant fear of being detected, who work in the most competitive and least unionized sectors of the economy, and who are easily victimized by criminal elements cannot possibly be in the public interest. Over the two centuries of its existence, the United States has slowly developed numerous laws, programs, and institutions

designed to reduce the magnitude of human cruelty and the incidence of economic uncertainty for most of its citizens. For the illegal alien workers, however, these benefits are often nonexistent. It would be self-deception to believe that this situation can continue to develop without eventual dire consequence to all parties concerned.

#### V. The Reform of Prevailing Policy

Having completed a review of the prevailing immigration system of the United States, it is apparent that it contains little order; is inconsistent in its objectives; and its few prohibitions are observed more in their breach than in their adherence. The current system is ineffective primarily because it is unenforceable. As the scale of immigration in all of its forms has increased dramatically in the past decade, the absence of a meaningful immigration system has become both more obvious in its effects and more ominous in its implications. The immigration system should be liberal in the number of persons it admits; fair in its assurances that non-discrimination on any ethnic basis shall continue to be the foundation for its selection criteria; and equitable to the citizens and workers of the communities in which immigrants settle. It is, of course, in the area of equity that the adverse consequences of the unenforceability of the prevailing immigration system are manifested. A number of policy changes are in order.

With regard to legal immigrants, it is important to this country which views itself as a "nation of immigrants" that humanitarian considerations remain a vital component of the entry process. The accomodation of political refugees and the reunification of families should remain as key features of the legal system. But if they are to remain as the mainstay of the legal immigration process, a categorical-assistance program should be created to cushion the economic hardships imposed on communities which receive high numbers of legal immigrants. The fulfillment of national policy goals should not impose severe hardship on any local community without some form of compensatory aid. The program should be based upon the principles of the "impacted areas" programs that once were used to assist communitities to adjust to the presence of a new or expanded Federal government installation in a local community. The assistance package should extend beyond simple job-training and language instruction. It should include funds to local public agencies to defer the financial burdens of education, housing, training, and health services that they are required to make as a result of national policy.

If the seemingly futile system of labor certification is to be continued, consideration should be given to making it meaningful. To accomplish this, a probationary period should be a part of the admission procedure to assure that the legal immigrants who are not family related go to the geographical

areas and are actually employed in the occupations that are the conditions of their admission.

Illegal immigration, of course, is the major area in need of immediate and comprehensive policy attention. In groping for the proper course for public policy to pursue, one must begin with the stark realization that in a free society illegal immigration cannot be totally stopped. No consensus will support the erection of a "Berlin Wall in reverse" that is designed to keep people out rather than in--or any equivalent drastic step. The best that possibly can be hoped is that the problem can be brought within manageable proportions. The situation is currently out of control, but not hopelessly so.

The mandatory first step is the passage of a federal statute that will forbid the employment of illegal aliens. Such a bill has cleared the U.S. House of Representatives in 1972 and 1974 only to die in a committee of the Senate. Passage of a federal statute of this nature is a must. The message must be clear that the employment of illegal aliens is an illegal act. Strong civil and, perhaps, criminal penalties should be set for repeat offenders.

Candidly speaking, one must say that the enactment of a law against employment of illegal aliens will not accomplish much. Such a law will depend upon proof that the employer "knowingly" broke the law. Proving this will be immensely difficult, if not impossible. Moreover, it is very doubtful

that many district attorneys would press for enforcement or that many juries would convict an employer for the offense of providing jobs to anyone. With court dockets already backlogged with serious crimes, it is hard to imagine that many employers would ever be brought to trial. Yet the possibility of prosecution would exist. Moreover, there would be some voluntary compliance and, at least, the moral weight of the law would be against the employment of illegal aliens. As meaningless as such a ban may prove to be, nothing else makes sense until such a law is on the books.

The obvious question that follows is how does an employer know if a person is a citizen or not? A query is hardly sufficient. With fraudulent documents easily accessible to anyone desiring them, mere possession of any of the standard means of identification would likewise be no deterrent. The only answer is the issuance of noncounterfeitable and unalterable social security cards to the entire population. Through the use of special codes already developed by cryptographers and computer experts, such a social security card would allow easy verification of the citizenship status of any would-be employee. It was announced by INS in 1977 that a similar noncounterfeitable card will be issued to the 4.2 million resident aliens who live in this country. It will, in essence, become their identity card.

There are, of course, legitimate fears about the establishment of what is tantamount to a work permit system in this country. Despite the fact that work permits are used in all other free nations of the world, it is true that authoritarian governments also use them as a means of citizen control, thus depriving citizens of civil liberties. The social security card, however, is already required as a condition of employment in the private sector of virtually everyone. The same is true for most public employees. Like it or not, the social security number has already become a national identification system. The social security number is used as a student number on many campuses; it is used as the driver's license number in many states; it is used by the Internal Revenue Service to identify taxpayers; and it is the serial number of all people in the military. The point is: it is absurd to worry about whether something will happen if it has already happened! The only questions that remain are should social security cards be made noncounterfeitable and should checks be made of these cards to assure that those who are using them to seek employment are legally entitled to have them? Certainly no one can seriously disagree with such objectives.

The necessity of significantly enlarging the number of INS enforcement officials is too obvious to be belabored. As long as this staff is less than the size of the police

force of the city of Houston, there is absolutely no way that even the current statutes can be enforced. Aside from apprehension of illegal aliens, the agency has numerous other duties to perform. A substantial increase in the number of INS enforcement officers would be by far the most effective short-run deterrent that could be initiated. In addition, the INS should have exclusive responsibility for checking all persons who pass through inspection ports of entry.

It is essential that the INS rely less on the voluntary departure system. The policy objective that illegal aliens are unwanted guests can never be taken seriously as long as there is virtually no chance of any penalty being imposed on offenders. Until all illegal aliens can be identified, records kept, and repeat offenders subjected to formal deportation (which would permanently preclude those individuals from ever becoming legal immigrants), there is no reason for an illegal alien to even ponder the risks--the alien has nothing to lose. More reliance on legal procedures, however, will be costly and time consuming and will also necessitate an increase in the INS budget. But these costs, as well as expenses related to the acquisition of more detection hardware, must be weighted against the aforementioned costs of allowing this mushrooming problem to continue. It will be far less costly to assume a strong posture of prevention than it will be to respond to the social problems inherent in this issue after they accumulate.



In the same vein, international policies must be part of the policy mix to reduce the flow of illegal immigrants. These must address the "push" factors; they should be directed primarily at efforts to assist in the economic development of the hemispheric neighbors of Mexico and the Caribbean area. These measures should include extensive offers of technical and financial assistance. It may be that efforts of this kind must be made through established multinational agencies--such as the World Bank, the International Monetary Fund, or the United Nations--instead of unilaterally. Mexico, in particular, is a proud nation; its leaders abhor the concept of direct foreign aid.

It must be realized that to some degree the illegal alien problem from Mexico is a by-product of past actions by the United States. For too many years, Mexico was seen as a pool of cheap labor that could be tapped at will throughout the Southwest. Hence, U.S. policymakers cannot be oblivious of the involvement of policy in the creation of the problem. For this past role the United States is obligated to assist the Mexican government in the reduction of the economic forces that continue to push many of its citizens into the illegal immigration stream. To be sure, the population explosion, the rural-to-urban migration, and the structural labor market changes resulting from technological change in Mexico would have caused the illegal alien flow to occur

regardless of any past actions by the United States. But that contention is really moot. The fact is that the United States did contribute to some of the forces that have institutionalized the illegal alien process. The United States cannot place the full responsibility to stop the flow upon Mexico.

The United States should carefully reassess its trade and tariff policies pertaining to Mexico. Efforts to lessen the restrictive barriers to agricultural and manufacturing imports from Mexico should be initiated at once. Such action would enhance the opportunities for Mexican export industries to expand and reduce some of the pressures causing illegal entry. It would also acknowledge the fact that Mexico is already a major importer of American-made goods. It might seem inconsistent to argue for a restrictive border policy toward Mexican aliens while favoring increased free trade with respect to the import of Mexican products. This is not so. The impact of increased imports can be more widely spread throughout the American economy. If there were any adverse domestic employment effects from increased imports, those effects could be determined more easily than in the case of illegal immigration. Moreover, there already exists legislation (the Trade Act of 1974) that provides substantial benefits to assist those particular industries and workers who may be harmed by such liberal trade policy adjustments. Nothing

is available for those citizen workers who are adversely affected by unfair competition from illegal aliens.

To a slightly lesser degree the same arguments could apply to many of the nations of the Caribbean area. The United States has long manifested political, economic, and military interest in the affairs of this region. The establishment of a regional economic common market is long overdue. With economic assistance and relaxed tariffs some of the outward pressures on illegal immigration from these countries may be stemmed.

With respect to Mexico one change in the legal immigration system must be made. The imposition of the 20,000 person quota to Mexico in 1977 was arbitrary. The low quota serves only as an additional prod to illegal entry. Mexico deserves a continuation of the special treatment that it has always been accorded in the past. Although some ceiling should be imposed, it should at least be in rough approximation to past immigration levels.

The final step that must be taken to end the problem of illegal immigration is granting general amnesty to all illegal aliens who have been in this country since January 1, 1973, providing that they register with the INS within an established grace period and that they have no record of criminal activity. The date of January 1, 1973 is chosen because it was on that date that amendments to the Social Security Act

took effect that specified that applicants for Social Security cards be required for the first time to furnish evidence of their citizenship.<sup>21</sup> There is precedent for such an amnesty. In 1965 amnesty was granted to all illegal aliens living in the United States prior to 1948. There should be absolutely no intention to issue another amnesty at some subsequent date. Because the tolerant policy of the past has unofficially condoned the influx of aliens, it is unrealistic to believe that any roundup of aliens who have established themselves in jobs and have families could be accomplished without serious hardship and much ill will. The accomplishment of the goal of ridding the labor market of illegal aliens should not be contrary to basic humanitarian concepts. Hence, amnesty is a must but only as the last step of a comprehensive program.

#### VI. The Proposals of the Carter Administration

On August 4, 1977 the long delayed proposals of the Carter Administration for reform of the immigration system were made public.<sup>22</sup> A key element of the comprehensive package is the call for employer sanctions. Hiring illegal aliens would be made an illegal act. Enforcement, however, would be limited to those employers who engage in a "pattern or practice" of hiring illegal aliens. Injunctive relief and civil fines of up to \$1,000 per alien would be the penalties.

A list of acceptable identification items--including the existing social security card--would be prepared by the Justice Department. To be in compliance, an employer need only to say that they have seen one of them. Of crucial importance is the fact that the employers would not be required to verify the authenticity of the identification nor would they be required to keep records of the documents they have seen.

The proposed employer sanctions would pre-empt all existing state and local laws that prohibit the employment of illegal aliens. As of the time of the President's proposals, 3 cities and 12 states had enacted such statutes and 15 additional states had similar proposals pending. The constitutionality of these state bans was unexpectedly upheld by the Supreme Court in 1976.<sup>23</sup> The Court held that a California law forbidding the employment of illegal aliens did not invade the exclusive authority of the federal government to set immigration policy.

Accompanying the employer sanctions would be "increased enforcement" of the Fair Labor Standards Act (FLSA) and the Federal Farm Labor Contractor Registration Act as well as improved liaison between INS and FLSA enforcement personnel. Increased vigilance would be requested of the Equal Employment Opportunity Commission to assure that minority citizens are not adversely affected by any discriminatory fall-out from the

alien hiring ban. Criminal penalties would be invoked against persons who act as human smugglers and brokers of alien workers.

The plan also calls for almost a doubling of the enforcement personnel of the INS. Criminal penalties would be sought for those who provide false identification documents.

But perhaps the most controversial portion of the proposal deals with the question of amnesty. Permanent resident alien states would be given to all illegal entrants who have lived continuously in the United States since January 1, 1970. These persons would be eligible for full citizenship after waiting the normal five year interval. For those persons who entered after January 1, 1970 but before January 1, 1977, a new class of "temporary resident alien" would be created. These persons would be required to register with the INS within one year and they would be allowed to remain in this country in this new status for a period of five years. They would not be allowed to bring in any family members and they would be ineligible for almost all federally assisted social programs (e.g., food stamps, medicaid, and Aid for Families with Dependent Children). The adjustment status of all affected persons would not be counted against the existing legal quotas regardless of country of origin. Anyone who has entered the country since January 1, 1977 would be deported upon apprehension.

The proposal also includes foreign policy provisions. Negotiations would be sought with Mexico and other source nations to seek their assistance in the enforcement and anti-smuggling provisions. Furthermore, consideration would be given to economic assistance to source countries to develop labor intensive projects. Information would also be given, if requested, about birth control methods. Increased trade with sending countries for the exports of labor intensive projects would "be explored."

Finally, the proposal calls for a comprehensive intra-agency study of the current immigration system. This would be the first thorough review since 1952. It was also announced that the Administration would support an increase in the current 20,000 person quota on annual immigration from Mexico (which has a demand in excess of this number) and Canada (which is not currently using its full allotment) to a combined total of 50,000 persons.

The Carter Plan was introduced as a "courtesy" into the Senate (as S.2252) by Senator Edward Kennedy (D-Mass.) and Senator James Eastland (D-Miss.) and into the House of Representatives (as H.R. 9531) by Congressman Peter Rodino (D-N.J.). In each of the past three sessions of Congress, the House has initiated action on immigration. In most instances, the House received much criticism from all sorts of groups adverse to some or all of its reform proposals. In most

instances, the Senate did not even act on the bills even at the committee level. The failure to act, of course, left the House in the lurch. It appears that the comprehensive proposal of the Carter Administration is caught in the residue of bad feelings concerning the intentions of the Senate. It seems that the House is intending to have the Senate initiate action this time before the House again commits itself. The Senate did hold hearings in May 1978 but does not seem to be in any hurry to proceed.

#### VII. Assessment and Concluding Observations

Obviously, the Carter plan is the product of a series of compromises within the Administration and between its political supporters. It is highly probable that if Congress does act that it too will seek to make a number of changes, additions, and deletions. Ultimately the courts will be involved as there are certain to be numerous ambiguous and controversial parts of such an ambitious policy initiative.

Looking, however, at the Carter Plan, it is apparent that it resembles in part but differs in significant degree from the comprehensive proposals outline in Section V of this article. There is no need to repeat the similarities but the differences do bear elaboration.

The most crucial difference pertains to the critical identification question. The Department of Labor had sought



to address the question head-on by re-issuing social security cards in a non-counterfeitable form. This card would have been the accepted identifier. The Department of Justice, however, feared civil liberties criticisms over the establishment of such a system and its position prevailed. As a result, the proposed employer sanctions provision is essentially meaningless. The real efficacy of the reform proposals, therefore, is in serious doubt.

The proposed two tier provisions for adjusting the status of the illegal entrants already in the country is of dubious merit. For those potentially eligible for permanent citizenship, it is unclear what is meant by the term "continuously" living in this country. As for the temporary resident alien status, it is widely believed that after 5 years that they too will be eligible for permanent resident alien status. But because there is no certainty that this will be the case, it will raise fears by many illegal entrants as to the wisdom of exposing their whereabouts through registration. Many may not come forth. Likewise, it is certainly questionable that a law can or should prevent families from being unified for upwards of five years. Also, by specifically declaring these persons to be ineligible for prevailing social legislation, aliens who are in dire need will be denied services.

The Carter proposal does recognize the need to enhance trade opportunities for source nations but it does not

specifically recognize the necessity of tariff reductions. Nor does it take the opportunity to press for such a venture as a common market of Caribbean and/or North American continent nations. Reducing the "push" pressures for illegal immigration should be given equal attention with those measures designed to reduce the "pull" forces. In the proposed package, this is not the case.

Yet, despite its apparent deficiencies, the reform proposals do acknowledge at the highest level of our government that the existing immigration laws are unenforceable. They do recognize the urgency to alter the ineffectual system that currently exists. They have attracted publicity to the issue and they have generated substantial public discussion. Immigration reform has not yet received the priority it deserves but, at least, it is now firmly secure on the nation's agenda of needed social action. The issue is no longer whether the nation will act but, rather, when and in what fashion.

## Footnotes

\*The Author is Professor of Labor and Industrial Relations,  
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1. William Bernard, "American Immigration Policy:  
Its Evolution and Sociology," International Migration, Volume  
III, No. 4, 1965, pp. 234-242.

2. Elliot Abrams and Franklin S. Abrams, "Immigration  
Policy--Who Get In and Why?", Public Interest (Winter 1975),  
pp. 3-29.

3. Annual Report: Immigration and Naturalization  
service: 1975 (Washington: U.S. Government Printing Office,  
1976, Table 14), p. 65.

4. P.L. 94-571 (1976).

5. Office of the President, Domestic Council Committee  
on Illegal Aliens, Preliminary Report (December, 1976), pp. 17-19  
[The report was subsequently made the final report after the com-  
mittee was disbanded following the change in Administrations.].

6. Ibid.

7. U.S. Department of Labor Employment and Training  
Report of the President, 1978 (Washington, D.C.: U.S. Govern-  
ment Printing Office 1978), p. 108.

8. Ibid., p. 107.

9. P.L. 414 Sec. 212 (a) (14) (1952); 66 Stat. 163.

10. David North "Alien Workers: A Study of the Labor  
Certification Program," (Washington, D.C.: Trans Century Cor-  
poration, 1971).

11. Cited at ftn. 5, pp. 20-21.

12. Cited at ftn. 7, p. 108.

13. For further elaboration see Vernon M. Briggs, Jr.  
Mexican Migration and the U.S. Labor Market, Studied in Human  
Resources No. 3 (Austin: Bureau of Business Research, 1975).

14. Los Angeles Times (February, 1977) pp. 1 and 22.

15. Office of the White House Press Secretary, "Message of the President of the United States to the Congress on the Problem of Illegal Immigration," Washington D.C., (August 4, 1977) p. 7. (Mimeographed material).

16. An unpublished report by the INS entitled "Estimated Total Number of Illegal Aliens and Employed Aliens by INS District," (November 22, 1976) estimated the total number of illegal aliens in the United States to be 6,036,500. Of this, 3,285,000 were believed to be from Mexico. (Mimeographed material), p. 1-7.

17. U.S. Department of Labor, Area Trends in Employment and Unemployment (Washington: U.S. Department of Labor, 1977).

18. Wayne A. Cornelius, "Illegal Mexican Migration to the United States: A Summary of Recent Findings and Policy Implications," (April 4, 1977) pp. 7-8 (Mimeographed material).

19. E.g., see David S. North and Marion F. Houstoun The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study (Washington, D.C.: Linton and Company Inc., 1976).

20. "Why the Tide of Illegal Aliens Keeps Rising" Interview with Leonel J. Castillo, Commissioner, Immigration and Naturalization Service, U.S. News and World Report (February 20, 1978), p. 34.

21. P.L. 92-603 Sec. 137 (1972).

22. Cited at footnote 15, pp. 1-7.

23. De Canas v. Bica, 424 U.S. 351 (1976).