

A CRITICAL ANALYSIS OF THE WETBACK PROBLEM

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The period, 1944-54, may well come to be known as the "wetback decade" of American immigration history. Our southern border has never been tightly sealed. For several decades prior to 1944, illegal entrants numbered, if we measure in terms of Border Patrol arrests, between ten and twelve thousand persons a year. Suddenly, however, in 1944, the figure jumped to 33,681. By 1946, it was 100,785; and by 1954, it was 1,035,282. The year by year fiscal figures are:¹

1944.....	33,681	1949.....	289,400
1945.....	70,639	1950.....	469,581
1946.....	100,785	1951.....	510,355
1947.....	194,954	1952.....	531,719
1948.....	193,852	1953.....	839,149
		1954.....	1,035,282

The Mexicans who illegally streamed across our southern border (though it should be observed that the border was equally open to anyone able to enter Mexico) acquired the tag "wetbacks" from crossing the Rio Grande without benefit of bridge. The term stuck and has been applied to all who enter illegally from Mexico.

THE WETBACKS

Who were these Mexicans who in increasing numbers, beginning in 1944, entered the United States? Why did they enter? What jobs did they seek? Most of the Mexicans who illegally entered the United States were men in their twenties or thirties, young heads of households. Characteristically, they left their families behind them in Mexico, but not infrequently, entire households came—mama, papa, and little ones to the babe in arms. There were also some single women. Pri-

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¹ IMMIGRATION AND NATURALIZATION SERVICE ANN. REP. *passim* (1944-54). There are several factors that may account for apparent discrepancies in wetback figures: (1) calendar v. fiscal year; (2) apprehensions by the Border Patrol v. apprehensions by the Immigration and Naturalization Service as a whole; (3) apprehensions of all illegal entrants v. apprehensions of Mexican illegal entrants (the figures were not kept separately until 1953); and (4) apprehensions v. voluntary departures and deportations. The figures cited in this study are Border Patrol apprehensions of all aliens, by fiscal years. Thus, there may be some slight overstatement in these figures, in as much as a few thousand illegal entrants were not Mexicans. However, it is thought that whatever overstatement this may entail (of an order of magnitude not exceeding two to three per cent) is roughly counterbalanced by the omission of arrests of illegal Mexican entrants by divisions of the Immigration and Naturalization Service other than the Border Patrol.

marily, they came because of poverty. They came to get dollars with which to supplement their inadequate peso earnings. There were other motives, of course, but poverty was overriding.

Mexico's poverty is, needless to say, scarcely new. In fact, very rapid strides in economic development have been made in the last decade and a half; but, seemingly, in 1944, large numbers of poverty-ridden Mexicans "discovered" the United States. Men and families came to earn dollars primarily by chopping and picking cotton, by thinning and harvesting sugar beets, and by picking fruit. The single women came to earn money in restaurant jobs, as household maids, or by supplying the redlight districts of the border cities. The men who looked for the higher-paying, nonfarm employment sought jobs in garages, on construction projects, on railroad maintenance, and in factories.

In a joint study by the GI Forum of Texas, a veterans' organization made up of Americans of Mexican ancestry, and the Texas State Federation of Labor, published in 1953 under the title, *What Price Wetbacks?*, we find the following description of those who were engaged in this illegal immigration:²

The vast majority of wetbacks are plain agricultural workers including women and children, mostly from the peasant class in Mexico. They are humble, amenable, easily dominated and controlled, and accept exploitation with the fatalism characteristic of their class. A common term applied to them is Guanajuato Joe, for the Mexican State of Guanajuato which supplies a large percentage of wetbacks apprehended in farm work. This type of wetback wants only to find work on a farm, mind his own business and be left alone by the Border Patrol. He accepts good or bad treatment, starvation wages, diarrhea and other sickness for his children from contaminated drinking water and unsanitary living conditions—all this he accepts stolidly and philosophically. He does not think in terms of native labor displacement, lowering of economic standards and the socio-economic effects of his presence in the U. S. Ideologies are beyond his comprehension. He understands only his way of life: to work, to suffer, and to pray to the Virgen de Guadalupe for a better life in the hereafter.

Another distinct type involves the so-called *Pachucos*, to be differentiated from residents of the United States who during wartime were given the same descriptive term because of their zoot-suit wearing apparel. The wetback *Pachucos* subdivide roughly into two classes. In one are found the criminals, the marijuana peddlers and users, the falsifiers of identity documents, the smugglers, the prostitutes and the homosexuals. The other class takes in those of higher intelligence with trade or partial professional backgrounds who are not interested in agricultural work and will not accept parole to such work when apprehended, usually in the act of being smuggled to the northern industrial centers. This class is motivated by the desire to get to the urban and industrial areas of the northern, northcentral and western areas of the country where the possibility of detection and apprehension by immigration authorities is slim and where earnings are larger.

Throughout the 1944-54 decade, the greatest density of illegal entrants was to be found in the border states, principally in the southern portions of Texas and California. Yet, as the traffic grew in magnitude, it also fanned out geographically.

² P. 6.

By 1950, arrests of illegal Mexicans were being regularly reported from states all the way to the Canadian border. Even Alaska was not impenetrable. In 1951, a band of thirty-eight was arrested on the Alaska Railroad close to the Arctic Circle.³

Occupationally, the majority of workers were engaged in hand or stoop labor in agriculture. With no union seniority or job rights to bar his way, the greenest Mexican entrant could find work in the crops. And it was mostly in such work that he remained. Nevertheless, with increasing experience and sophistication, he, too, found the higher paying nonfarm jobs enticing. Hence, as the traffic widened geographically, it also broadened occupationally. For example, in Chicago, in a four-week period between January 30 and February 25, 1951, a special detail of fifteen immigration officers arrested 1,148 illegal Mexican entrants. Of the persons arrested, 398 were working on the railroads, 105 in meat packing and processing, 97 in steel, 32 in hotels and restaurants, 426 in other industries, and 76 in agriculture.⁴ In 1953, the Immigration and Naturalization Service began recording the occupations of the illegal entrants. In that year, 3.0 per cent were found to be in "trades, crafts and industry"; in 1954, 3.6 per cent; and in 1955, 9.1 per cent were found in such jobs.⁵

A SOCIAL PARADOX

With illegal immigration from Mexico rising in an almost geometric progression, the 1944-1954 decade represented a curious social paradox: the political forces clamoring for an ever more restrictionist general immigration policy were either strangely silent with respect to the situation on our southern border or openly condoned it. The late Senator Pat McCarran, co-author of the Immigration and Nationality Act,⁶ whose name in most person's minds is synonymous with restrictionist immigration thinking, defended the illegal traffic over our southern border on the grounds that legal entry of Mexicans for employment in American agriculture and industry involved too much "red tape."

In hearings on the Justice Department appropriation for the year ending June 30, 1954 before the senate subcommittee on which Senator McCarran was then ranking Democrat, Senator Ellender observed with respect to the contract Mexican workers which the United States was importing from Mexico:⁷

The Mexican Government has gone so far as to make us, in contracts, agree to feed these people while en route, take them back, provide minimum wages, and give them health insurance, and all that

Senator McCarran responded:

The wetback is little interested in that sort of thing. In other words, a farmer can get a wetback and he does not have to go through that red tape.

³ Unpublished data of the Immigration and Naturalization Service.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ 66 STAT. 163, 8 U. S. C. §§ 1101-503 (1952).

⁷ *Hearings before the Subcommittee of the Senate Committee on Appropriations on H. R. 4974, 83d Cong., 1st Sess. 246 (1953).*

To individuals who have persevered through visa forms for a visit to the United States, the late Senator's words must seem little short of astounding. Of temporary visitors, as of permanent immigrants, the United States requires such information as the following taken from a nonimmigrant visa application blank of the United States Consulate in Paris:

Places of residence:

- A. [I]ndicate . . . the places where you have lived since your birth up to 1932.
- B. [I]ndicate the places where you have actually lived since the first of January 1933. . . . It is important to give the exact address (street, city, country) of the places where you have actually lived during periods of six months or more. . . . If you have done military service, if you have been mobilized or if you have been in prisoner of war camps or concentration camps, you must be prepared to present appropriate documents, of official source, in support of your declarations.

Affiliations:

- A. Give . . . the name and address of all organizations, veterans' associations, workers or employers associations, professional groups, societies, clubs, circles, political parties, literary or cultural societies in which you may have taken part since December 31, 1918, or in which you presently take part, indicating with precision the dates of inscription and of resignation and the functions fulfilled in each one of them.
- B. Explain the character and the aims pursued by each one of the organizations. . . .

Financial Reference: (designate preferably bank or commercial references).

Purpose of trip:

- A. Indicate the reasons for which you are making the trip.
- B. Name and address of persons, societies . . . upon whom you will call. . . .
- C. Indicate if the cost of your trip will be covered by (yourself), (your business), (your relatives) or (your friends).
- D. Probable date of departure for the USA.
- E. Means of transportation.

"Red tape" would seem to be the middle name of American immigration policy. When, however, the prospective entrant to our country is a cheap laborer, the co-author of the Immigration and Nationality Act appeared to have little patience with forms. Outright illegal entry did not seem upsetting. In the appropriations hearing referred to above, we find the late Senator McCarran observing:⁸

. . . Senator [Ellender], I think you will agree with me that on this side of the border there is a desire for these wetbacks. . . . Last year when we had the appropriation bill up the item that might have prevented them coming over to some extent was stricken from the bill.

. . . .

We might just as well face this thing realistically. The agricultural people, the farmers along the Mexican side of the border in California, in Arizona, in Texas . . . want this help. They want this farm labor. They just cannot get along without it.

This was the same Senator who wired Senator Butler two months later, with reference to the pending Refugee Relief bill:⁹

⁸ *Id.* at 245-46.

⁹ *Hearings before the Subcommittee of the Senate Committee of the Judiciary on S. 1917*, 83d Cong. 1st Sess. 123 (1953).

Reports reach me early hearings are scheduled on Senate Bill 1917 to admit 240,000 immigrants above quotas. Urgently request you exert your influence toward deferral of hearings . . . as I am extremely anxious to be present at all such hearings. . . . Proper screening of all entering aliens and adherence to established immigration standards is vital to our material welfare.

In 1948, the year in which debate was bitter as to whether we should admit 100,000 displaced persons per year for four years, in addition to regular immigration (such persons to be charged against future quotas), close to 200,000 Mexican workers illegally entered the United States. In 1952, when the issue before the country was adoption of the Immigration and Nationality Act, 500,000 illegal entrants from Mexico came into the country. Yet, the hearings on the bill took no public note of this. Instead, the Senate Judiciary Committee, ignoring the southern border, somewhat pompously observed on reporting out the bill:¹⁰

Today, as never before, a sound immigration and naturalization policy is essential to the preservation of our way of life because that system is the conduit through which a stream of humanity flows into the fabric of our society.

Passage of the Refugee Relief Act in 1953¹¹ came at the price of revision of the Immigration and Nationality Act. Only by agreement not to press for amendments to the basic act, was Mr. Eisenhower able to get consideration for the emergency measure. The President asked for 240,000 additional aliens over a two-year period. Congress refused this number, reducing it to 210,000 over a three-and-a-half year period. Congress said we could not absorb so many aliens, that escapees and refugees presented political risks. Typical of the arguments before the Senate Judiciary Committee on this legislation were those of General Walter Bedell Smith, Undersecretary of State:¹²

Where matters of security are involved, I think that I would be speaking your own minds when I say that you do not take calculated risks if you can avoid doing so.

Senator Herman Welker, of Idaho:¹³

That gets into the question in the mind of almost every Senator: What are we going to do when we do not have this high level of employment for these people [the immigrants]? Will they be wards of the Government? Will they deprive our returning servicemen and growing up young men of work? This is the question that an opening of my mail brings to mind.

and Mrs. James C. Lucas, Daughters of the American Revolution:¹⁴

Let in these 240,000 and each year another emergency will arise completely undermining the safeguards of our immigration law.

¹⁰ *Revision of Immigration and Nationality Laws*, S. REP. NO. 1137, 82d Cong., 2d Sess. 1-2 (1952).

¹¹ 67 STAT. 400, as amended, 50 APP. U. S. C. A. § 1971 (Supp. 1955).

¹² *Hearings*, *supra* note 9, at 10.

¹³ *Id.* at 98-99.

¹⁴ *Id.* at 142.

Further, the Refugee Relief Act did not pass Congress until guarantees had been added that the entrant would have employment which would not displace an American worker and that he would have housing which similarly would not displace anyone. This, Congress insisted on writing into immigration from Europe in the year when American workers in the states along the Mexican border were being displaced from jobs and, in consequence, from their homes by better than three-quarters of a million foreign workers. One might appropriately wonder how inconsistent it is possible for national policy to be.

1954 saw the wetback traffic grow to over 1,000,000 persons. Still, Congress was splendidly indifferent. It chose to shut its eyes to the economic and social consequences of this traffic.

Senator McCarran was not alone in fearing legal immigrants and visitors from Europe, while having no apprehensions about the illegal Mexican entrants, despite the fact that they included smugglers, narcotics peddlers, criminals, and prostitutes. The Daughters of the American Revolution, throughout this entire period, were equally contradictory; while denouncing the displaced persons legislation, avidly supporting the McCarran-Walter Act, and opposing the Refugee Relief Act, they did nothing to call attention to the situation on our southern border. In contrast, the American Legion was one of the few groups to be consistent on the subject of immigration. Not even the Joint Congressional Committee on Immigration and Nationality, set up under the terms of the Immigration and Nationality Act "to make a continuous study of the administration of this [act]"¹⁵ appeared to have the slightest interest in the "invasion" occurring over the southern border. Probably no better description of the period exists than that provided by Herblock, cartoonist for the Washington Post and Times Herald, who summed up the situation in a cartoon depicting a Congressman exclaiming, "I don't want any *legal* immigration around here."¹⁶

WETBACKS AND IMMIGRANTS

We have spoken of 200,000; 500,000; 800,000; 1,000,000 wetbacks, taking as our measure Border Patrol arrests. Some may object to this measure, pointing out that one and the same Mexican may have been arrested, two, three, five times within the space of one year, thus distorting the total. The point is well taken, for although illegal entry into the United States is a misdemeanor on the first offense, a felony on repeated attempts, illegal entry by Mexicans has not been taken seriously. One and the same Mexican may have made repeated illegal entries. However, an equally pertinent point to observe is that by no means all illegal entrants were arrested. The Border Patrol would be the last to claim that during the period between 1944 and 1954 it caught all illegal entrants. In fact, some immigration officers put the ratio at one half, others at one third, and still others at one fourth. Obviously, this is an area where there is no such thing as reliable statistics. In the circumstances, the

¹⁵ 66 STAT. 274, 8 U. S. C. § 1106(c) (1952).

¹⁶ Washington Post, April 14, 1952, p. 6, col. 4.

writer is content to take the figures of arrests as the best indication of the growth of this traffic and believes these totals may be regarded as a conservative estimate of the extent of the movement across the border.

Further, some may question the appropriateness of comparing the scale of this movement with authorizations for permanent entry into the United States, such as was implied in comparing the numbers of wetbacks with debate on admissions under the Displaced Persons Act,¹⁷ the Immigration and Nationality Act, and the Refugee Relief Act. Typically, wetbacks entered for temporary employment and then returned to Mexico, whereas immigrants enter for permanent residence. It is true that the great majority of Mexicans who illegally crossed the border returned home at the end of the season or when their luck ran out. It is also true that some of them stayed. Even though in percentage terms the overwhelming proportion undoubtedly returned, it can readily be appreciated that even so small a fraction as five per cent of 500,000; 800,000; 1,000,000 is not altogether inconsequential. Five per cent of these figures amounts to 25,000; 40,000; and 50,000, respectively. Comparing these figures with quota allotments, we note that they are exceeded by only one quota, that of the United Kingdom and Northern Ireland. The United Kingdom's quota, rounded, is 65,000. Rounding other quota figures, we find the second highest is that of Germany's at 25,000; the third, Ireland's at 18,000. Then the figures drop to 6,000 for Poland, 5,000 for Italy, and 3,000 each for France, Sweden, and the Netherlands.¹⁸

There are only scattered bits of evidence on which to make a judgment of the proportion of illegal Mexican entrants who failed to return to Mexico: 1) the proportion of Mexican contract workers in the 1942-47 period who were never repatriated; 2) the numbers of illegal entrants put under contract in 1947, 1949, and 1950; 3) the provision in Public Law 78 of 1951 permitting recruitment of Mexicans illegally in the United States;¹⁹ and 4) the scale of recent legal immigration from Mexico. Let us examine these points in turn.

If we compare admissions and repatriations of contract workers for the six-year period, 1942-47, inclusive, we find that better than eight per cent of the 219,600 Mexicans admitted during this period got "lost" in the United States, that is to say, 18,294.²⁰ If we note the composition of the contract program for the years 1947, 1949, and 1950, we will find that the bulk of the program consisted of workers illegally in the United States being put under contract. In 1947, 19,632 workers were brought in from Mexico and 55,000 wetbacks legalized.²¹ In 1949, 19,625 workers were brought in from Mexico and 87,220 wetbacks legalized.²² In 1950, the figures were 66,058 from Mexico and 10,461 from those illegally in the country.²³

¹⁷ 62 STAT. 1009 (1948), as amended, 50 App. U. S. C. §§ 1951-65 (1952).

¹⁸ Proclamation No. 2980, 66 STAT. c. 36, 8 U. S. C. § 1151 (1952).

¹⁹ 65 STAT. 119 (1951), as amended, 7 U. S. C. § 1461 (1952). For discussion of the Mexican contract labor program, see *infra* 341-44.

²⁰ Unpublished data of the Department of Agriculture.

²¹ See PRESIDENT'S COMMISSION ON MIGRATORY LABOR, MIGRATORY LABOR IN AMERICAN AGRICULTURE 52 (1951).

²² *Id.* at 53.

²³ Computed from IMMIGRATION AND NATURALIZATION SERVICE ANN. REP. *passim* (1950-51).

In Public Law 78 of 1951, the enabling legislation for the present Mexican contract program, Congress authorized the Secretary of Labor to recruit Mexicans not only in Mexico, but among those who had illegally resided in the United States five years or more.²⁴ If there were not a fair number of such workers in this category, it does not seem likely that Congress would have been at pains to write in such a provision. Lastly, if note is taken of legal immigration figures from Mexico to the United States during the past few years, it will be seen that Mexicans regard living in the United States favorably. The Mexican Government has recently made it simpler for Mexicans to acquire passports. The consequence has been a sharp increase in legal Mexican immigration. The figures for the fiscal years 1951 to 1955 are:²⁵

1951	6,153	1954	30,645
1952	9,079	1955	50,772
1953	17,183		

For these reasons, the foregoing estimate of five per cent of the illegal Mexican entrants "electing" to remain in the United States would seem conservative, that is to say, for 1952, 25,000; for 1953, 40,000; and for 1954, 50,000.

HOW THERE CAN BE ILLEGAL IMMIGRATION FROM MEXICO

In the foregoing discussion, frequent reference has been made to "illegal" immigration from Mexico. In as much as Mexico, like all independent republics of the western hemisphere, is outside the quota system,²⁶ it may well be wondered how there is such a thing as illegal immigration from Mexico. Cannot as many Mexicans as wish enter the United States? The answer is both "yes" and "no." With respect to permanent entry, there is, essentially, no limitation on the number of Mexicans who can annually enter the United States, providing they meet the *selective standards* of our immigration law—that is, are of good moral character, are politically reliable, are suffering none of the proscribed diseases, etc. The qualification "essentially" is used because there is a provision in the Immigration and Nationality Act, inoperative to date, which supposedly could be used numerically to restrict immigration from the western hemisphere. Reference is to section 212(a)(14) which provides that:²⁷

Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor [shall be excluded from admission into the United States] if the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) sufficient workers in the United States who are able, willing, and qualified are available at the time (of application for a visa and for admission to the United States) and place (to which the alien is destined) to perform such skilled or unskilled labor, or (B) the employment of such aliens will adversely affect the wages and working conditions of the workers in the United States similarly employed.

²⁴ 65 STAT. 119 (1951), as amended, 7 U. S. C. § 1461(1) (1952).

²⁵ See IMMIGRATION AND NATURALIZATION SERVICE ANN. REP. *passim* (1951-56).

²⁶ 66 STAT. 169, 8 U. S. C. § 1101(a)(27)(C) (1952).

²⁷ 66 STAT. 182, 8 U. S. C. § 1182(a)(14) (1952).

The language of this provision is borrowed from section 503 of Public Law 78 of 1951,²⁸ the Mexican contract labor program. It is capable of being meaningfully applied to contract workers because contract workers do not have freedom of movement and are imported for a specific employer. It can never have meaning as applied to permanent immigrants on whom no restrictions of movement are placed.

Regulations governing permanent entry have been noted. The situation is different with respect to entry for temporary employment. Neither under the legislation which governed until the end of 1952 nor under the Immigration and Nationality Act is it possible for a nonimmigrant to initiate a search for employment. The 1924 Act²⁹ did not list employment among the purposes by which a nonimmigrant was defined. While the Immigration and Nationality Act does list employment among the purposes by which a nonimmigrant is defined in the initial definitional section of the act, there is no subsequent authorizing provision to breathe life into the definition in the circumstance of the worker initiating the search. Section 101(a)(15)(H) defines a nonimmigrant ("an alien having a residence in a foreign country which he has no intention of abandoning") to include:³⁰

[an alien] who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. . . .

There is, however, no substantive provision in the act which allows a nonimmigrant, *on his own*, to take advantage of this definition. Instead, the Immigration and Nationality Act limits entry for temporary employment to those who are imported as contract workers. In this, it overturns one of the oldest provisions of American immigration law. Section 214(c) of the act provides:³¹

The question of importing any alien as a nonimmigrant under Section 101(a)(15)(H) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer.

By contrast, the 1917 Act explicitly and definitively banned contract workers. Under the 1917 Act, which governed until the coming into effect of the Immigration and Nationality Act, the ban on contract labor reached its full and final expression. Under its terms, "contract labor" (which applied to immigrant and nonimmigrant alike) was taken to include:³²

persons. . . who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come

²⁸ 65 STAT. 120 (1951), as amended, 7 U. S. C. § 1463 (1952).

²⁹ Act of May 26, 1924, c. 190, 43 STAT. 163.

³⁰ 66 STAT. 166, 8 U. S. C. § 1101(a)(15)(H)(ii) (1952).

³¹ 66 STAT. 189, 8 U. S. C. § 1184(c) (1952).

³² Act of Feb. 5, 1917, c. 29, 39 STAT. 876.

in consequence of advertisements for laborers, printed, published or distributed in a foreign country. . . .

Under the 1917 Act, workers could not be imported except in so far as the Attorney General saw fit to make an exception in the case of temporary workers under the powers accorded him in the 9th proviso to section 3 which stated:³³

That the Commissioner of Immigration and Naturalization with the approval of the Attorney General shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission.

In recent years, there was additional legislation, adopted initially in 1943, under which foreign workers have been brought in under contract. Public Law 45 of 1943, as amended, authorized importation of agricultural workers from the Americas through December 1947.³⁴ And Public Law 78 of 1951, as amended, authorizes importation of Mexican agricultural workers. The most recent amendments extend this latter law to June 30, 1959.

As the foregoing discussion indicates, there are provisions in our immigration laws which govern entry, be the alien immigrant or nonimmigrant, quota or non-quota. And, where there are rules governing entry, it is clear that entry must be through "ports of entry" if the rules are to mean anything. Mexicans who enter the United States at other than "ports of entry," thus, violate our immigration law.

WHAT PRODUCED THE WETBACK DECADE?

At the outset of our discussion, we referred to the period of 1944-54 as the "wet-back decade." How did it happen that in 1944 the number of Mexicans illegally entering the United States suddenly started shooting upwards? What accounts for the almost two-fold increase of that year over 1943 and for what was to become, by 1954, an increase of over 6,000 per cent? World War II was already two years in progress. What, then, was the cause? The only event which the writer can see which might serve to explain this development is the initiation of the Mexican contract labor program.

In August 1942, as a wartime emergency manpower measure, an executive agreement was signed with Mexico providing for the admission of Mexican contract labor for work on farms and on railroad maintenance-of-way. This was done under the 9th proviso of section 3 of the 1917 Act and continued under Public Law 45 of 1943.

Less than a handful of workers entered in 1942, but in 1943, 52,098 were brought in for employment in agriculture. In 1944, 62,170 were brought in for farm work.³⁵ Importations for railroad work ceased within nine days of the Japanese broadcast of August 14, 1945 announcing a willingness to surrender.³⁶ By contrast, in agri-

³³ *Id.* at 878.

³⁴ 57 STAT. 70 (1943), 50 U. S. C. §§ 1304, 1351 (1952).

³⁵ Unpublished data of the Department of Agriculture.

³⁶ See U. S. EMPLOYMENT SERVICE, DEP'T OF LABOR, MEXICAN NATIONALS BROUGHT IN FOR RAILROAD TRACK LABOR—A TEMPORARY WAR EMERGENCY MEASURE, 1943-1946 (unpublished monograph 1946).

culture, importations not only did not cease in August 1945, nor in 1946; the "war-time" program is still in effect! In 1955, six and one-half times the number of Mexican agricultural workers were admitted as were admitted at the war's peak. And, in 1944, there were five times the number of persons in the armed forces as there are today.

Apparently, the relation between this Mexican contract labor program and the spiraling illegal immigration was this: Contract workers returned with exciting tales of the money that could be earned in the United States. The next year these same workers wanted to repeat their performance and their neighbors wanted to join. The result was that there were many more Mexicans who wanted to come to the United States than there were certifications of need issued by the Secretary of Labor. Further, managing to be among the workers selected by the Mexican officials for the program characteristically required the persuasion of a bribe.³⁷ Thus, it seemed to many much simpler to seek American employment on their own. Accordingly, those with experience volunteered or were persuaded to lead others. Each year brought an increased number of those who "knew the ropes." An interview with a wetback published in the *Daily Palo Alto Times*, August 21, 1953, strikingly bears out this conjecture. The illegal worker was from a small town almost due west of Mexico City and some 800 miles south of the Texas border. According to him, almost every able-bodied man among the 8,000 persons in the town had been to the United States, was actively planning to come, or was here—most of them as wetbacks.

THE CONSEQUENCES OF THE WETBACK TRAFFIC

The economic and social consequences of this illegal Mexican immigration were severe, disruptive, and harmful. Specifically, they involved displacement of American workers, depressed wages, increased racial discrimination toward Americans of Mexican ancestry, illiteracy, disease, and lawlessness. Let us consider these in turn.

Because of the wages and working conditions which illegal Mexican workers accepted—wages of ten, twenty, and thirty cents an hour from sun-up to sun-down and a ditch bank for the night—they drove American workers from jobs. In 1949, over 90,000 "Texas-Mexicans"—Texans of Mexican ancestry—were pushed out of Texas during the spring, summer, and fall, to seek elsewhere the same kind of work they would otherwise have done in Texas—*i.e.*, cultivating and harvesting the crops.³⁸ A student of Mexican ancestry at Pan American College in Edinburg, Texas, located in the lower Rio Grande valley, where the wetback concentration was probably as dense as anywhere in the United States, wrote, in a term-paper in 1953, on the problem of illegal immigration:

³⁷ See discussion in *G. I. FORUM OF TEXAS AND TEXAS STATE FEDERATION OF LABOR, DOWN IN THE VALLEY* (1955), under the heading, "Bracero Recruiting and Contracting."

³⁸ See *Hearings before the Subcommittee on Labor and Labor-Management Relations of the Senate Committee on Labor and Public Welfare*, 82d Cong., 2d Sess. 8 (1952).

As long as there are people here unwilling to work for the incredibly low wages for which the wetbacks work, the Spanish-speaking people are forced to leave their homes, go to strange places, and seek jobs paying just wages that will enable them to provide food, clothing, and shelter for their large families. These people are also forced to deprive their children of an education since these youngsters must travel and work with their parents to earn their daily living.

A fruit picker from Sonoma County, California, where work in the fall of the year is to be had in apples, prunes, grapes, and walnuts, expressed typical bitterness over wetback competition in a letter to government officials dated September 1953. He complained:

The wetbacks are driving the American workers out of the fields, the American workers don't want to live on charity, they want to work under decent conditions. . . .

We are American taxpayers, we have worked hard to pay for our small homes, we have also been paying income taxes for years when we had steady jobs, work has been falling off in Sonoma County of late . . . and us taxpayers need these fruit jobs badly, it is bad enough to compete with Mexican National labor [contract labor legally brought in] but we just cannot compete with wetbacks.

We just cannot live under the same conditions these wetbacks live under, and we just cannot work under these conditions these ranchers expect American people to work under.

The Chamber of Commerce advertise over the radio, also in the newspapers, how short the ranchers are on help to harvest their crops, there is no shortage of fruit help, the reason is, the ranchers want cheap labor, that will live and work under any conditions

Europe is not the only continent which has DP's.

Since no agency of government is obliged to administer minimum wages in agriculture and unions are virtually nonexistent, there was neither official nor organized interest in the wage consequences of the wetback traffic. The President's Commission on Migratory Labor, appointed in 1950, did, however, address itself to this problem. Cotton-picking wage rates in Texas in the lower Rio Grande Valley, where illegal workers constituted the bulk of the labor supply, were compared to the average for the state as a whole, which, while reflecting wetback wages, reflected them in more diluted form. The Commission reported:³⁰

When the Commission held hearings in Texas in August 1950, wage rates for picking short staple cotton in the Lower Rio Grande Valley were reported as low as 50 cents per hundredweight and as high as \$1.75 per hundredweight. From the evidence presented, we conclude that the bulk of the cotton in this area was picked in 1950 for approximately \$1.25 per hundredweight. . . . However, the State-wide average 1950 rate for Texas is . . . reported . . . by the U. S. Department of Agriculture to have been \$2.45 per hundredweight. Thus, the Lower Rio Grande Valley cotton growers got their cotton picked for approximately one-half the wages paid by the average cotton grower of Texas.

When it meant a fifty per cent reduction in the size of their wage bill, small wonder growers considered wetbacks a good thing.

The general counsel of a veterans' organization made up principally of Americans

³⁰ PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *op. cit. supra* note 21, at 78-79.

of Mexican ancestry testified before a senate committee investigating the migratory labor problem in 1952 on the effect which the illegal immigration has had on racial discrimination toward this group of Americans. He observed:⁴⁰

We came back [from World War II] to find the wetback invasion already flowing. We came back to find disappointment and disillusionment after we had been told that we were going over there to fight for a better way of life and to fight against racism.

It [the wetback invasion] has accentuated tensions between population groups and resulted in an aggravation of practices of discrimination and segregation springing up where none had existed before. We have signs in public places reading, "No Mexicans Allowed," where none had been seen before. We have had an increased number of violations of civil rights where none had occurred before.

In areas where there is the greatest concentration of this illegal immigration, illiteracy of American citizens is likely to be general. This was the finding of a Columbia University project initiated by Mr. Eisenhower when he was Columbia's president. Entitled *The Uneducated*, the study found a striking correlation between areas of high illegal labor supply and illiteracy as revealed in the rejection rates for military service in World War II.⁴¹ In the proportion of white citizens (including Mexicans) rejected for military service on grounds of mental deficiency, Texas ranked third highest among the states, with a rejection rate of 63 per 1,000.⁴² A high proportion of the Texas rejections were found south of a line which might be drawn from El Paso to Houston, which area includes two-thirds or more of the state's Spanish-speaking population. The rejection rate for this area ran over 200 per 1,000.⁴³ But most astounding of all is what the Columbia study found in the counties of the lower Rio Grande Valley concerning displaced Americans. The report found Hidalgo County, in the extreme southern part of the state, to have a rejection rate just under 400 per 1,000.⁴⁴ The average school attendance rate was twenty-eight per cent. The report comments:⁴⁵

The explanation for this very low rate must be found in the heavy seasonal migration of this population. Apparently they are dispossessed by the illegal immigrants who come over the border at harvest time.

Significantly, the report goes on to observe:

The economic level of these Texas counties is strikingly different from that found in most parts of the rural Southeast [where high rejection rates also were found]. . . . [T]he three most southerly counties in Texas . . . had an average cash income per farm in 1949 of not less than \$13,500. It must be remembered, however, that the prevailing agricultural wage for the illegal immigrant, the wetback, amounted to 25 cents.

And the study might have added that it was this wage to illegal workers which determined the wages available to American citizens. An American family cannot live on twenty-five cents an hour. It is forced to seek jobs elsewhere.

⁴⁰ *Hearings before the Subcommittee on Labor and Labor-Management Relations of the Senate Committee on Labor and Public Welfare*, 82d Cong., 2d Sess. 141, 132 (1952).

⁴¹ ELI GINSBERG & DOUGLAS W. BRAY, *THE UNEDUCATED* 51 (1953).

⁴² *Ibid.*

⁴³ *Id.* at 46-47.

⁴⁴ *Id.* at 174.

⁴⁵ *Id.* at 175.

Death and disease rates in the areas where the illegal traffic was greatest bore little relation to average United States rates. The President's Commission on Migratory Labor reported the findings of the Public Health Service. It stated:⁴⁶

One of the most sensitive indicators of the state of public health in any population is the rate of infant mortality. . . . For the U. S. at large, this rate in 1948 was 32 [per 1,000 births]. The state-wide average for Texas was 46.2; . . . for the 28 counties of Texas on or immediately adjacent to the border, the average rate was 79.5. In the three counties commonly regarded as constituting the Lower Rio Grande Valley, the infant mortality rates were as follows:

Cameron.....	82.5
Hidalgo.....	107.2
Willacy.....	127.6

In the areas where the illegal aliens were found in large numbers, crime rates skyrocketed. Lawlessness bred lawlessness. Typical of the situation in border areas are the following items taken from *one* issue of the McAllen, Texas, Valley Evening Monitor, of April 20, 1953:

Edinburg. An alien was badly beaten in his shack south of Pharr and then stuffed into a wooden box by a man who stole \$3 from him, officers reported today.

Edinburg. Bond of \$2,000 was set Saturday for Daniel Rangel, a 20 year old alien charged with stealing \$137.71 from a McAllen cafe where he worked.

Laredo. Mexican and U. S. border authorities have cooperated to end a series of burglaries in which Mexican "wetbacks" . . . entered Laredo business and residential establishments, authorities announced.

An editorial published in the San Antonio Evening Express of September 28, 1953 under the heading of "Aliens and Valley Crime Rate" underscores the concern felt toward the crime which accompanied the wetback traffic:

The Hidalgo County grand jury last week indicted 48 persons of whom 35 were listed as aliens. The charges against the aliens were burglary 24, marijuana 4, theft 2, and robbery, assault, statutory rape, murder and possession of a forged instrument, one each. . . . Not all aliens, of course, are in the Valley with intent to commit burglaries or other infractions of Texas criminal law. . . . But the traditions and conditions that make up the "wetback system" account for much of the alien crime and misdemeanor rate and produce the surroundings that make it possible and even encourage it.

More and more Valley people, including farmers, are coming to realize this and to see that there is a lot more to the picture than the convenience and economy of having a big supply of cheap farm labor.

The narcotics traffic burgeoned with the increase in the illegal immigration. The chief assistant to the California Attorney General reported to Mr. Brownell in 1953 that a "very substantial part of the narcotics brought into California across the border is brought in by wetbacks."⁴⁷ The California State Bureau of Narcotic Enforcement in Sacramento reported that practically all narcotic drugs seized in the

⁴⁶ PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *op. cit.* *supra* note 21, at 84.

⁴⁷ San Francisco Chronicle, Aug. 18, 1953.

territory is of Mexican origin and approximately half the persons arrested for dope violations are "Mexicans."⁴⁸

A witness before the Senate Labor Committee holding hearings on migratory labor in the 82nd Congress commented on the lawlessness which this illegal immigration engendered:⁴⁹

. . . the heavy influx of illegal immigrants . . . has developed a feeling of disrespect for and contempt of the laws of the land. When our immigration and labor laws are flaunted and openly disregarded, it is only logical to expect a general moral decadency on the part of the citizenry in general.

CONGRESS: INDIFFERENCE

As indicated earlier in our discussion, Congress was splendidly indifferent to this whole situation on the southern border. In fact, as the situation became progressively worse, Congress, through the appropriation process, cut the Border Patrol, that arm of the Government equipped to do something about the situation. The fiscal year-by-year authorized strength of the Border Patrol in this period looked this way:⁵⁰

1942.....	1,592	1947.....	1,319	1952.....	1,250
1943.....	1,637	1948.....	1,160	1953.....	1,079
1944.....	1,360	1949.....	1,125	1954.....	1,079
1945.....	1,251	1950.....	1,110	1955.....	1,479
1946.....	1,352	1951.....	1,098	1956.....	1,526

Study of these figures will indicate that as illegal immigration became a more and more serious problem on the southern border, Congress appropriated funds for progressively fewer officers for the Border Patrol. As we have noted, the first big jump in illegal immigration occurred in 1944. From the figures cited above, it will be seen that Congress reacted to this by cutting 109 positions from the Border Patrol. Congress reacted to the situation of close to 200,000 illegal entrants in 1948 by cutting 35 positions from the Border Patrol for the year ending June 30, 1949. Congress reacted to the situation of better than half a million illegal entrants in 1952 by cutting 180 positions from the Border Patrol.

With cuts in its officer strength amounting to 350 officers for the period 1941-1952, in the face of an increase of illegal immigration of over 4,000 per cent within the same period, the Border Patrol was utterly helpless to stem the tide. The Border Patrol rounded up wetbacks to the extent it had facilities to corral them, took them to the border, and put them over the Mexican side. Not infrequently, the wetbacks would joke with the officers saying they would beat the officers back to the farms on which they had been arrested. And some did! In the mounting helplessness of

⁴⁸ Oakland Tribune, Sept. 1, 1953.

⁴⁹ *Hearings*, *supra* note 40, at 133.

⁵⁰ For 1943-53, see *Hearings*, *supra* note 6, at 248; for 1954-56, see IMMIGRATION AND NATURALIZATION SERVICE ANN. REP. *passim* (1954-56).

the situation, the Border Patrol tried other expedients. For the year ending June 1952, it operated an airlift by which the wetbacks were taken into the interior of Mexico. It took to putting wetbacks over the border at points where there was no American agriculture for miles around. But all to no avail until 1954. In 1954, when the number of illegal entrants reached the phenomenal proportion of over 1,000,000, the law began to be enforced.

THE DECISION TO ENFORCE THE LAW

How did it happen that decision was made to enforce the law at this particular point? How, with such numbers of illegal entrants, was the law enforced? Both are good questions. The decision to enforce the law was made by the Attorney General, following an inspection trip to the California border in the summer of 1953. After he had made this trip the Attorney General was a very different person on the subject of illegal immigration than he had been a few months earlier.

In a belated effort to get on top of the deteriorating situation, the Truman administration had requested for the year July 1953 to June 1954 an increase of thirty per cent in Border Patrol officers. The Eisenhower administration not only rejected this increase, but proposed what would have been tantamount to a twenty per cent reduction in the existing force by eliminating the spotter planes which the Border Patrol has used since 1940. These planes, used in conjunction with radio-equipped jeeps, are frequently referred to as the "eyes" of the Border Patrol. The Budget Bureau explained that since Congress seemed to have little interest in illegal immigration over the southern border, it was appropriate that the administration go along with this attitude—an interesting concept of executive responsibility.

In the hearings on the Justice Department budget, Attorney General Brownell strongly defended the cuts. Testifying before the House Appropriations Subcommittee on the fiscal 1954 budget, the Attorney General was asked by Congressman Frank T. Bow (R., Ohio), "Do you feel that the estimate that you have in the budget now adequately covers the Immigration and Naturalization Service?"⁵¹

The Attorney General replied, "Yes, I do," and then added:

Mr. Andretta reminds me that one of the first things that came to me when I came in office was a request for a supplemental appropriation for \$1,725,000 for the Immigration and Naturalization Service. I received some advice from the Bureau that they absolutely had to have that money in view of their increased responsibilities. But I made an investigation of my own and decided that they could get along without it. I did not ask for the supplemental appropriation and they are getting along all right and I am hoping that they will even have a few dollars left over at the end of the year.

Congressman Bow responded:

I would like to call this to your attention. This was brought before the committee by the American Legion. The Legion, at its national convention last year, introduced a resolution, and part of it said that:

⁵¹ *Hearings before the Subcommittee of the House Committee on Appropriations, on Departments of State, Justice, and Commerce Appropriations for 1954, 83d Cong., 1st Sess. 226 (1953).*

Whereas sufficient funds have not been allocated to the Service to cover the additional personnel necessary to handle the added workload: Now therefore be it Resolved by the American Legion . . . August 25, 1952, that sufficient additional funds be assigned and allocated by the Congress of the United States to the Immigration and Naturalization Service.

. . . . [T]he chairman of the committee of the . . . Legion who drafted this resolution . . . told me that he had been told by a number of people in the Immigration Service that this committee just did not give them enough money to operate; that they had knowledge of thousands of aliens in this country illegally, but, because this committee did not give them enough money, those people were still running around the country. I hope that the Department and you, as the new Attorney General, will see that some of these agencies stop their propaganda that this committee is not giving them enough money to enforce the laws. . . . I could not believe that if they knew of . . . [thousands of people at large who ought not to be in the country] there was not some way they could be apprehended.

Four months after testifying before the House Committee, the Attorney General was prevailed upon personally to inspect the border situation in the California sector. That it was clearly an eye-opener to the Attorney General was indicated by comments to the press. Typical of press reports of this trip was the following:⁶²

Brownell . . . declared . . . that the influx of illegal immigration from Mexico presents a "serious and thoroughly unsatisfactory situation." He said he found the situation outlined by border country officials "shocking" and one that is causing "universal dissatisfaction" on the part of all concerned.

Apparently forgetting his own enthusiasm for a reduction in the Border Patrol at budget time, Mr. Brownell, after his inspection, was for no false economies. One newspaper account put it this way:⁶³

The Attorney General said Congress decided six or seven years ago for economy reasons to cut the size of the U. S. Border Patrol from 1,660 to its present 1,100. "This was the most penny-wise and pound-foolish policy I've ever seen," he declared. For every dollar saved through this Border Patrol economy, he said, about \$20 has to be spent on welfare costs and other expenses involving the wetbacks.

Mr. Brownell returned from this trip to champion increases in budget for the Border Patrol. For the year ending June 30, 1955, Mr. Brownell persuaded the administration to request an increase of thirty-seven per cent in the size of the Border Patrol.⁶⁴ Subsequent budget requests have sustained this increase.

Bringing the border situation under control with more than one million illegal entrants in the country, however, was more than a matter of mere budget increases.

⁶² Corpus Christi Caller-Times, Aug. 16, 1953.

⁶³ The San Francisco Examiner, Aug. 17, 1953.

⁶⁴ This was done in two installments, through supplemental bills. See *Hearings before the Subcommittee of the House Committee on Appropriations, on the Departments of State, Justice, and Commerce Appropriations, The Supplemental Appropriation Bill, 1955*, 83d Cong., 2d Sess., pt. 2, at 1068-74 (1954); *Hearings before the Subcommittee of the House Committee on Appropriations, on the Departments of State, Justice, and Commerce Appropriations, The Second Supplemental Appropriation Bill, 1955*, 84th Cong., 1st Sess. 276-93 (1955).

It required strong backing from the top boss of the Immigration Service, the Attorney General himself, and it required imagination and new methods of procedure on the part of the Commissioner of the Immigration Service. Attorney General Brownell and Commissioner Swing represented this combination. General Joseph M. Swing, appointed Commissioner of Immigration and Naturalization in May 1954, shuffled officials to eliminate regional vested interests. He established mobile task forces and brought the resources not only of the Border Patrol, but the other Divisions of the Immigration and Naturalization Service to bear on the roundup of the illegal entrants. With Attorney General Brownell, who was willing to give real support to enforcement of immigration law on our southern border, with General Swing's leadership, and with the budget increases, the day of the wetback is over. The border should be under control by the end of 1956. This job, considered hopeless by many, will have been accomplished in two years.

THE CONTRACT PROGRAM

The end of the wetback era should not, however, be taken to indicate the end of reliance on cheap foreign labor. There may be some who question the use of "cheap" as applied to Mexican labor, insisting instead that Mexican contract labor is "premium" labor. Because the Mexican Government has refused to accept for its citizens participating in the contract program the terms and conditions of employment offered to American workers, it is true that Mexican labor enjoys many "advantages" not open to American workers—the protection of a minimum wage, a guarantee of employment, approved housing, workmen's compensation, safe and free transportation, and so forth. Although Mexican labor is "premium" with respect to standards in agriculture, it is "cheap," by the standards prevailing elsewhere in the American economy. This can readily be seen in the wage situation alone. Mexican contract workers have a fifty-cent minimum.⁵⁵ Elsewhere in the economy where the Fair Labor Standards Act⁵⁶ prevails, one dollar is the minimum wage. Fifty cents is "premium" when compared to no minimum wage. It is not "premium" when compared to one dollar.

The scale of contract program fluctuated erratically until 1951, when there was a three-fold jump in numbers. 1951 was the year in which Public Law 78 was passed. For two years thereafter, importations stayed around this new level and then, again, sharp increases occurred as a result of the wetback roundup.

Importation figures are not a fully satisfactory measure of the scale of the contract program because they include neither Mexicans recruited in the United States, not those recontracted here. Because, however, importation statistics are the only comprehensive figures for the whole of the program, and because there is advantage in being able to look at the entire span, let us note importation data for 1942-1955:⁵⁷

⁵⁵ An oral understanding between the Mexican and the United States Governments in connection with the 1951 agreement.

⁵⁶ 52 STAT. 1060 (1938), 29 U. S. C. §§ 201-219 (1952).

⁵⁷ For 1942-48, unpublished data of the Department of Agriculture; for 1949, see PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *op. cit. supra* note 21, at 53; for 1950, data derived from IMMIGRATION AND NATURALIZATION SERVICE ANN. REP. 1950-51; for 1951-55, see U. S. EMPLOYMENT SERVICE, DEP'T OF LABOR, FOUR-YEAR SUMMARY OF MEXICAN WORKERS BY STATES (n.d.).

1942.....	4,203	1947.....	19,632	1952.....	197,000
1943.....	52,098	1948.....	35,345	1953.....	201,380
1944.....	62,170	1949.....	19,625	1954.....	309,033
1945.....	49,454	1950.....	66,058	1955.....	398,650
1946.....	32,043	1951.....	192,095		

The figures for the years 1947, 1949, and 1950 are misleadingly low because they do not include Mexicans recruited in the United States. In these years, the United States gave preference for inclusion in the contract program to those who had violated the laws of this country. In 1947, some 55,000 Mexicans illegally in the United States were contracted for the program; in 1949, 87,220;⁵⁸ in 1950, 10,461 workers were added from this source.⁵⁹ With these additions, the figures for these years are:

1947.....	74,632
1949.....	106,845
1950.....	76,519

A different kind of "unusualness" was resorted to in 1948 when several thousand illegal entrants were "paroled" to farm employers.

If workers who were recontracted (their stay *legally* extended) are added to those admitted, the figures are appreciably increased. Mexicans under contract (imported plus recontracted) for the years 1952 to 1955 are:⁶⁰

1952.....	219,231	1954.....	335,610
1953.....	225,192	1955.....	439,606

Thus, it will be seen that Mexicans under contract in American agriculture in 1955 approached half a million.

Under the contract program, Mexican workers have been placed in roughly half of the states of the union. However, the bulk of the Mexican labor has been concentrated in a few states which have differed in different periods. In percentage terms, the distribution of Mexicans under contract for selected years was:⁶¹

	1945	1949	1952	1954	1955
Washington.....	6	none	small	negligible	small
Idaho.....	5	none	negligible	negligible	negligible
Oregon.....	4	none	negligible	negligible	negligible
California.....	63	8	28	24	27
Texas.....	none	44	27	50	50
New Mexico.....	none	17	11	5	4
Arkansas.....	none	16	12	7	7
Arizona.....	8	4	4
Total.....	78	77	86	90	92

⁵⁸ See PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *op. cit. supra* note 21, at 52-53.

⁵⁹ Computed from IMMIGRATION AND NATURALIZATION SERVICE ANN. REP. *passim* (1950-51).

⁶⁰ See U. S. EMPLOYMENT SERVICE, DEP'T OF LABOR, *op. cit. supra* note 57.

⁶¹ For 1945 and 1949, see PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *op. cit. supra* note 21, at 55; for 1952, 1954, and 1955, see U. S. EMPLOYMENT SERVICE, DEP'T OF LABOR, *op. cit. supra* note 57. Arizona employed workers in both 1945 and 1949, but percentage figures are not available.

SAFEGUARDS: ARE THEY REAL?

Section 503 of Public Law 78, under which these Mexicans are being brought in, provides:

No workers recruited under this title shall be available for employment in any area unless the Secretary of Labor has determined and certified that (1) sufficient domestic workers who are able, willing, and qualified are not available at the time and place needed to perform the work for which such workers are to be employed, (2) the employment of such workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed, and (3) reasonable efforts have been made to attract domestic workers for such employment at wages and standard hours of work comparable to those offered to foreign workers.

Let us consider these three conditions in turn.

The first qualification on the admission of Mexican workers raises some very interesting questions. When and when not is domestic labor "able," "willing," and "qualified"? Is an unemployed city worker to be regarded as "able" to do farm work? Is a refusal to work for wages of thirty cents, forty cents, and fifty cents an hour to be taken as an absence of "willingness"? It will be noted that section 503 calls for the domestic worker *on his own* to be available at the time and place indicated. This contrasts with the arrangement accorded Mexican workers, whose transportation is paid from the "recruitment" centers in Mexico, to the "reception" centers at or near the border, to the farms on which they will be working and return.

Because Mexican workers are banned if their presence acts as a depressant on the wages of domestic workers, a rather exceptional amount of governmental confusion surrounds the effect of bringing in hundreds of thousands of Mexican workers. In as much as the Labor Department has to find that these workers do not depress wages if any are to be brought in, and the pressures to bring them in are of the magnitude which led this Government to ignore enforcement of immigration law for over a decade, it is clear that the Labor Department is not in a position to speak its mind. The simple fact is, of course, that in the market place, in the absence of controls, it is impossible to increase the supply of any unit of production without decreasing the price. The following exchange between Senator Paul Douglas (D., Ill.), who has taught many a course in economics, and a user of British West Indian labor in the Senate Labor Committee's hearing on migratory labor in 1952 illustrates the general confusion on this point:⁶²

D. If you have 500,000 bushels of apples, will the price per bushel be less than if you had 200,000?

U. That is right.

D. Then, if you had 20,000 units of labor, will not the price per unit of labor be less than if you had 8,000?

U. I still maintain . . .

⁶² *Hearings, supra* note 40, at 603, 604.

D. Increasing the supply of apples diminishes the price of apples. Increasing the supply of clocks decreases the price of clocks. Increasing the supply of locks decreases the price of locks. Increasing the supply of everything decreases their price, except the case of labor? There you can bring in labor and it does not affect the price of labor? You are a very logical and able man, can you really defend that position?

....

D. You are for a protective tariff on manufactured goods, but free importation of labor?

U. What would you expect a Connecticut Yankee to be?

D. I would expect a Connecticut Yankee to be consistent.

By lowering the wage level, contract foreign labor not only handicaps American agricultural labor, but also those farmers who, together with members of their families, supply a major part of their own manpower requirements.

In observing that foreign labor is a depressant on domestic wages, it must not be thought that this implies that contract labor is as great a depressant as illegal labor. Obviously, depressants are of different orders of magnitude. With the fifty-cent minimum provided in the Mexican agreement, there is the protection to the domestic worker, to the extent that the agreement is enforced, that wages will not fall below that level. This is markedly above the twenty-five-cent level which not infrequently characterized wetback wages.

There are other confusions. When it is said that a program is a depressant on wages, it does not necessarily imply that wages fall in consequence. They may not rise as rapidly and as much as otherwise they would.

The Mexican program provides that contract workers will be paid the "prevailing" wage for the proposed farm work or the minimum of fifty cents, whichever is the higher. Now the interesting thing about the "prevailing" wage in the Mexican program is that it is determined ahead of the season before any wages are paid, and, further, up until August 1955, it was determined solely by growers conferring together. Under the 1955 amendments to Public Law 78, which extended the law another three and a half years, there are now to be consultations with workers as well as growers both with respect to the supply of domestic workers and the wages to be paid.⁶³

The third qualification on the admission of Mexican workers is that efforts have been made to attract domestic workers at comparable wages and hours. The noteworthy feature of this provision is that it is restricted to wages and hours. In the 1955 hearing on extension of Public Law 78, the Labor Department sought to have the act amended so as to require the Secretary of Labor, as the Department spokesman explained,⁶⁴

. . . to certify that every reasonable effort has been made to fill the jobs with domestic workers not only by offering them wages and hours of work comparable to those offered

⁶³ 69 STAT. 615, 7 U. S. C. A. § 1463 (Supp. 1955).

⁶⁴ *Hearings before the Subcommittee on Equipment, Supplies, and Manpower of the House Committee on Agriculture on H. R. 3822, 84th Cong., 1st Sess. 5 (1955).*

foreign workers, but also by offering them transportation, housing, and insurance benefits comparable to those provided foreign workers under the program.

The Congress chose not to be so generous toward American citizens.

One of the most telling examples of how this third qualification on the admission of Mexican workers has been administered is afforded by an examination of the certifications for Mexican workers in the low employment months of the year, December to March. This is the season of the year when there is much available domestic labor. Yet what do we find? We find employment being given to Mexicans when abundant citizen labor is available. In December 1955, over 100,000 Mexicans were working under contract in the United States, when thousands of citizens would have been glad for the jobs. These 100,000 workers constituted close to a third of the total of all seasonal workers employed in December in the twenty-one states which last year employed Mexican workers. Over 50,000 of these contract workers were employed in Texas, the major "home-base" area of domestic migratory workers.⁶⁵

The GI Forum of Texas and the Texas State Federation of Labor prepared a supplementary report to their study, *What Price Wetbacks?*, cited above. This report, which came out in the fall of 1955 following the wetback cleanup, was entitled *Down in the Valley*. With respect to efforts made to attract domestic workers for farm work, we find the following observations:⁶⁶

The lot of the domestic agricultural worker has improved considerably since the mass deportations of the wetbacks in the summer of 1954, but the same worker is still faced with a number of economic problems arising directly from the bracero [contract] program.

The annual migration of citizen agricultural workers starts in South Texas during the latter part of March . . . [and] lasts until October, November, and, in late years, through the first few days in December.

From October until June, there are usually large groups of migratory workers wintering in South Texas. The greatest concentrations are to be found in the months of December, January, February and March. During this period there is an overabundance of citizen farm labor throughout South Texas.

This domestic agricultural labor force is a skilled force, available, willing and able to perform any agricultural labor tasks in South Texas. The workers are constantly seeking work to supplement summer earnings.

Yet few of these migrants, all of whom are American citizens, are able to find work during the winter months, unless they are willing to work for bracero wages. Thousands were idle during the winter of 1954-55. Hundreds of them, because of absolute necessity, worked in the fields with "special" braceros, for 30¢ and 35¢ an hour. On applying for work, most of it part-time, they were told by the farmers that unless they were willing to work for bracero wages, or rather, the sub-contract wages the braceros were accepting, the employer would hire more braceros.

The foregoing quotation from groups which are competing with the contract workers suggests that the safeguards with which Congress has surrounded the contract program are not as substantial as some might wish to suppose. On the

⁶⁵ See U. S. EMPLOYMENT SERVICE, DEP'T OF LABOR, REPORT ON OPERATIONS OF THE MEXICAN FARM LABOR PROGRAM (1956).

⁶⁶ No pagination. Quotation is from the section entitled "The Domestic Agricultural Workers."

other hand, while the contract program has serious and deep-rooted drawbacks, no one concerned with labor standards, health, and security would deny that it represents an enormous improvement over the decade, 1944 to 1954.

The problem to which the contract labor program is addressed is the shortage of domestic agricultural workers. Obviously, in short-run terms, the program helps to meet the problem. It makes workers available. The more basic question, however, is, "What is the long-run effect of this program?" "Is it helping to move toward a more adequate domestic supply of workers?" Fundamentally, American agriculture is faced with a chronic shortage of labor because employment in agriculture is not competitive with employment elsewhere in the American economy. Therefore, whenever the American economy is at or near full employment, agriculture tends to get only that labor "which is left over." This was brought out with unwitting clearness in a question which the chairman of the House Agriculture Subcommittee put to a Michigan "labor user" during the hearings on the extension of Public Law 78 in 1955. The chairman asked:⁶⁷

Isn't there quite a different standard of living when you consider a person who would gather snap beans and help you to harvest them, than a person who works in the Ford plant?

The employer-association spokesman replied:

Why, absolutely. There just is not any real comparison of the standard of living of the two groups of people. If we get any, have any bites, to our recruitment out of Detroit, it is from the skid row people around Howard Street and down around Fourth Street in Detroit, who for some reason cannot see where the next meal is coming from and if we have a bus down there that morning at an employment agency why, maybe this is worth a try.

Given reasonably full employment, we will have a shortage of workers in agriculture until the time that terms and conditions of employment in agriculture begin to resemble employment elsewhere. The question which any prospective agricultural worker must answer is, "Why work in agriculture if one can earn three times as much in a factory?" In 1955, farm wages were 36.1 per cent of manufacturing wages. This reflects a relative decline in farm wages from the high of 1946 when farm wages were 47.9 per cent of manufacturing wages.⁶⁸ Does increasing reliance on foreign contract labor help to narrow the gap between employment in agriculture and employment elsewhere? It does not. It preserves it by institutionalizing the difference.

The foregoing account of illegal and contract Mexican labor could only have related to American agriculture. It could only have related to American agriculture because even though employers in other sectors of the economy might have the wish

⁶⁷ *Hearings, supra* note 64, at 129.

⁶⁸ Unpublished data of the Department of Agriculture. For farm wage rates, Agricultural Marketing Service (composite cash farm wage rates), *Farm Labor*, Jan. 12, 1956; for hourly earnings of manufacturing workers, Bureau of Labor Statistics (gross hourly earnings of production workers on non-supervisory employees), various issues of *Monthly Labor Review*.

for cheap foreign labor, labor exerts such a voice in these areas that importation of foreign labor is totally out of question. Although the provisions governing importation of contract workers in the Immigration and Nationality Act are written broadly enough to apply to any employment, it is inconceivable that the head of General Motors would ask the Attorney General for permission to import unskilled foreign workers. It is equally inconceivable that the Attorney General would grant such a request.

Although production of food and fiber is large-scale business in the United States today, organized labor has scarcely a toe-hold position in the picture. In agriculture, labor does not have the legal right to organize and bargain collectively. Agricultural workers are outside the Fair Labor Standards Act; in about one-third of the states, they can be covered by Workmen's Compensation, but in only one state does coverage occur on a compulsory basis as it does for other workers. It was in 1954 that large numbers of agricultural workers were brought under OASI; they are not covered by unemployment compensation. Not only is labor in agriculture without the protection of labor standards legislation, this last decade and a half would suggest it is not even to enjoy the traditional protection of restricted immigration. Both circumstances come about because there is no "countervailing" force to employer interests in agriculture. It does not seem likely that the situation will basically change until organized labor develops a greater interest in the condition of those who earn their living by jobs in the fields.

The last decade and a half of movement over the Mexican border provides an interesting case-study in motives for limiting or not limiting immigration. In the competition, the economic motive seems to have won out hands down over other considerations—for example, security. The prospects of at least a fifty per cent reduction in the wage bill dissolved the fears which tend to characterize our thinking when we ask ourselves the question, "How many aliens can the United States annually absorb?"

A study of this Mexican population movement, largely temporary but including sizable permanent shifts, raises the question whether it is sound national policy to impose rigid numerical limitations on immigration from elsewhere in the world, while leaving immigration from countries in this hemisphere totally unrestricted. The writer would like to see this country adopt a far more liberal immigration policy than it has today, but she cannot help questioning the wisdom of holding immigration from Europe, Asia, and elsewhere to rigid, small numbers, while permitting unlimited entry from this hemisphere.