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Pfeffer, Max J. (2008) "The Underpinnings of Immigration and the Limits of Immigration Policy," *Cornell International Law Journal*: Vol. 41: Iss. 1, Article 3.
Available at: <http://scholarship.law.cornell.edu/cilj/vol41/iss1/3>

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The Underpinnings of Immigration and the Limits of Immigration Policy

Max J. Pfeffert†

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Introduction

That immigration is a defining feature of U.S. history and American culture is undisputed, but the appropriate level of immigration and its contribution to the nation's economy and general well-being has been a matter of considerable contention at various points in U.S. history. We currently find ourselves in the midst of a controversy about the effective regulation of immigration. The failure of past immigration policy is most apparent in the fact that an estimated 11 to 12 million unauthorized immigrants reside in the United States,¹ and since 2000, an estimated 500,000 additional unauthorized immigrants have arrived each year.² Americans agree that we need to implement more effective immigration policies, but the nation's political leaders are deeply divided over the appropriate solution.³

These divisions are not surprising considering the enormity of the problem. Indeed, given the magnitude of immigration to the United States, one wonders whether immigration policy alone, whatever its specific configuration, can reasonably result in an immigration system that both meets

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1. JEFFREY S. PASSEL, PEW HISPANIC CTR., THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.: ESTIMATES BASED ON THE MARCH 2005 CURRENT POPULATION SURVEY i (2006), available at <http://pewhispanic.org/files/reports/61.pdf>.

2. *Id.*

3. Janet Hook, *Border Security an Issue for GOP*, L.A. TIMES, Nov. 27, 2005, at A2. 41 CORNELL INT'L L.J. 83 (2008)

national needs and protects immigrants. What the United States needs is a more comprehensive policy approach that combines immigration reform with related issues. At the very least, these other issues should include labor, development, and social welfare. Local policies, seldom considered in national debates, also merit more careful consideration.

Policy reform needs to create a variety of targeted opportunities that will help enable foreigners' involvement in American economic and social life. In other words, the U.S. government should develop a wider array of options for immigration status, legal work status, or both to better address complex labor market and social needs to accommodate the demand for workers with a variety of skill sets that spans a range of industries and occupations. In addition, providing diverse opportunities for immigrants to engage in American social and economic life will enable them to improve the quality of their lives while making concrete and productive contributions to American society.

I will first review some well-known, useful information about immigration that places immigration policy within the broader social context and then provide more detailed justification for my assertions above.

I. Recent Immigration Trends and Immigrant Characteristics

Much of the current concern about immigration began with the spike in immigration to the United States during the 1990s.⁴ Figure 1 shows census data on the number of foreign-born persons moving into U.S. counties between 1995 and 2000, arranged by the year they first entered the United States. A large number of foreign-born persons who established their U.S. residence between 1995 and 2000 entered the United States for the first time during the 1990s.⁵ Figure 1 also shows that the number of newly-arrived immigrants far exceeds the number of immigrants who established U.S. residence prior to 1995.

Immigration scholars note that the surge of immigration in the 1990s is part of a longer wave of immigration in U.S. history.⁶ This great "fourth immigration wave" began with immigration policy reforms in 1965.⁷ The previous waves coincided with colonization (1607-1820), frontier expansion (1820-1870), and industrialization (1880-1925).⁸ Scholars refer to the current wave as "the globalization wave."⁹ By sheer numbers, there are now more foreign-born persons living in the United States than at any

4. Alex Kotlowitz, *Our Town*, N.Y. TIMES, Aug. 5, 2007, at F30.

5. PASSEL, *supra* note 1, at 2.

6. See generally Ernest Rubin, *The Demography of Immigration to the United States*, 367 ANNALS AM. ACAD. POL. & SOC. SCI. 15 (1966) (providing a historical overview of major periods of immigration to the United States).

7. MARY M. KRITZ & DOUGLAS T. GURAK, IMMIGRATION AND A CHANGING AMERICA 8 (2004).

8. *Id.* at 4.

9. *Id.* at 8.

point in American history.¹⁰ Although the ongoing globalization wave began in the late 1960s, Figure 1 displays the strong increase in immigration during the 1990s. This increase reflects the surge in unauthorized immigration during the 1990s.¹¹

Figure 1. Foreign Born Migration to U.S. Counties (1995 to 2000) by Year of First Entry to the United States¹²

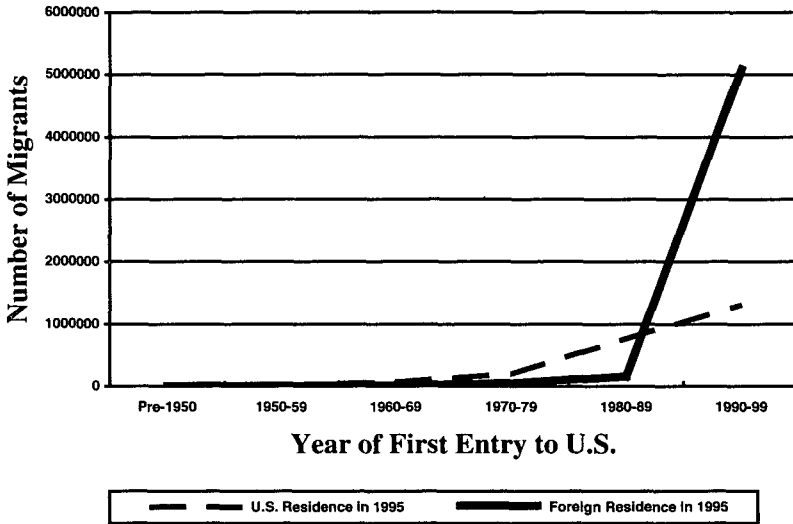


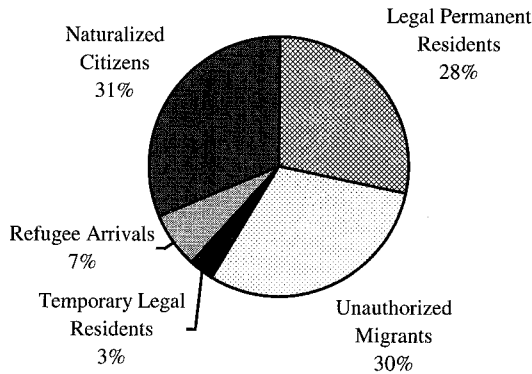
Figure 2 shows that in 2005, unauthorized immigrants accounted for almost one-third of the foreign-born population (11.1 million), nearly equal to the number of naturalized citizens (11.5 million), and slightly more than legal permanent residents (10.5 million) in the United States. Because these estimates are based on the entire foreign-born U.S. population, they underscore the contemporary importance of unauthorized immigration, which has grown rapidly since 1990.¹³

10. *Id.* at 10 (noting that about 12% of the U.S. population is foreign-born today, compared with about 15% in the early twentieth century).

11. *Id.* at 11.

12. See DVD: The Census 2000 Migration Data DVD (U.S. Census Bureau 2003) (on file with author).

13. See PASSEL, *supra* note 1, at 2.

Figure 2. Legal Status of the Foreign-Born Population in 2005¹⁴

Recent trends clarify the central role that unauthorized immigration plays in immigration issues generally.¹⁵ Figure 3 shows the trends in the undocumented population in the United States since 1980. In 1990, there were between 4 and 7 million unauthorized persons living in the United States; by 2006, some estimates put this number at almost 12 million.¹⁶ Scholars have estimated that two-thirds of the unauthorized population in the United States arrived in the last ten years and that 40% arrived in just the last five years.¹⁷ As noted above, scholars believe that the unauthorized population has grown by an average of over 500,000 per year since 2000.¹⁸ Significantly, the current unauthorized population is almost triple the size it was when Congress passed the Immigration Reform and Control Act (IRCA) in 1986 that granted amnesty to many undocumented immigrants residing in the United States.¹⁹

14. PASSEL, *supra* note 1, at 4.

15. KRITZ & GURAK, *supra* note 7, at 9-10.

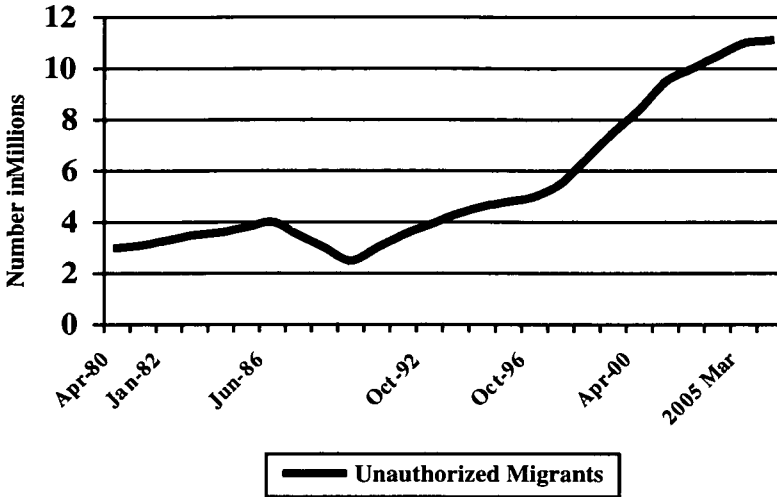
16. See PASSEL, *supra* note 1, at 2.

17. *Id.*

18. *Id.* at i.

19. *Id.* at 3.

Figure 3. Trend in Unauthorized Immigrants Living in the United States 1980-2005²⁰



Scholars estimate that the majority (56%) of unauthorized persons in the United States come from Mexico.²¹ Continued Mexican migration adds to the already-sizeable Mexican population in the United States. More immigrants come to the United States from Mexico than from any other country,²² and approximately 10% of all persons born in Mexico now live in the United States.²³ It is therefore important to focus on immigration from Mexico, and I will return to this point below.

II. Public Opinion of Immigration

With this background and in the context of ongoing immigration policy debates, it is useful to turn our gaze to U.S. citizens and their views on immigration. Certainly, given the immigration policy debates in Washington and around the country over the past two years, the issue is a popular topic of debate.²⁴ Public opinion polls demonstrate considerable consistency in the public's attitudes toward immigration.²⁵ Major surveys conducted around the country in 2006, such as the one conducted by the Pew Hispanic Center,²⁶ highlight several national themes:

20. *Id.*

21. *Id.* at 4.

22. *Id.* at 5.

23. KRITZ & GURAK, *supra* note 7, at 13.

24. See Randal C. Archibold, *With Immigration Bill Stalled, Advocates Push Forward*, N.Y. TIMES, June 14, 2007, at A24.

25. Max J. Pfeffer & Pilar A. Parra, *New Yorkers' Perceptions of Immigrants and Immigration*, RES. & POL'Y BRIEF SERIES (Cmty. & Rural Dev. Inst., Ithaca, N.Y.), Mar. 2007, at 1.

26. PEW HISPANIC CTR., AMERICA'S IMMIGRATION QUANDARY (2006), available at <http://pewhispanic.org/files/reports/63.pdf>.

- Americans disagree over appropriate levels of legal immigration. In New York, respondents were asked: "Thinking not just about your town but rather about the United States as a whole, do you think that the number of foreign immigrants coming into the United States should be increased, decreased, or remain about the same?"²⁷ About the same proportion (45%) said that the level of immigration should stay about the same as those who responded that it should decrease.²⁸
- Nationwide findings indicate that the U.S. public is almost evenly divided on whether immigration is good for the country or not. Research in New York State, a frequent immigrant destination, finds most people divided about whether immigrants are an asset or a burden in their own communities.²⁹
- Americans throughout the nation believe that unauthorized immigrants take jobs that Americans do not want.³⁰
- A majority of Americans favor measures that would allow illegal immigrants currently in the United States to remain in the country either as permanent residents and eventually become citizens or as temporary workers who must eventually return to their country of origin.³¹
- A recent New York Times/CBS News poll found that about two-thirds of respondents nationwide favored granting renewable visas to illegal immigrants if the individuals pay fines, maintain clean criminal records, and pass background checks.³²
- More than 60% of those polled agreed that illegal immigrants who have been in the United States for two years or longer should be able to apply for legal status.³³

These results are especially striking when one considers that two-thirds of the respondents to the New York Times/CBS nationwide poll also favor a guest worker program.³⁴ These results and other findings from around the nation indicate that the American public is more inclined to change national immigration policy than some political leaders.³⁵ The vocal political opponents of lenient immigration policy measures do not represent public opinion on immigration policy.³⁶

27. MAX J. PFEFFER & PILAR A. PARRA, IMMIGRANTS AND THE COMMUNITY: COMMUNITY PERSPECTIVES 5 (2005), available at <http://rny.cornell.edu/document/pdf/Immigrant%20Report%20IV1.pdf>.

28. *Id.*

29. *Id.* at 4.

30. See Randal C. Archibold, *Reactions Run Gamut, but Immigrants Work on*, N.Y. TIMES, June 30, 2007, at A1.

31. Julia Preston & Marjorie Connelly, *Immigration Bill Provisions Gain Wide Support in Poll*, N.Y. TIMES, May 25, 2007, at A1.

32. CBS NEWS/N. Y. TIMES POLL, IMMIGRATION REFORM 12 (2007), available at http://www.cbsnews.com/htdocs/pdf/052407_immigration.pdf.

33. Preston & Connelly, *supra* note 31.

34. *Id.*

35. *Id.*

36. *Id.*

We might draw two conclusions from these various survey findings: first, the American public wants some change to immigration policy; second, Americans accept measures that they perceive as opposing one another. Of course, one could argue that responses to public opinion surveys depend on a superficial understanding of the issues and that the public can express contradictory opinions. However, it is not clear that Congressional debates are any more logical. The political horse-trading required to assemble major immigration policy is likely to result in a policy with significant shortcomings.

There are a number of problems with each of the proposed policy measures. The biggest problem could be that Americans invest too much hope in the ability of immigration policy alone to deal with the wide range of issues related to the current high levels of immigration, especially unauthorized immigration. Any of the proposals to control unauthorized immigration are likely to have a variety of unintended but profound and often undesirable impacts on immigrants, American communities, and employers.

III. The Underpinning of Immigration

A. The Limits of Immigration Policy

In the past year, Americans have called for greater control of unauthorized immigration, mainly because of concerns caused by surreptitious border crossing.³⁷ Since 1986, the U.S. government has made a series of efforts involving large expenditures for personnel and equipment to prevent unauthorized border crossing.³⁸ The controls have changed Mexican migration in significant and unintended ways. They have resulted in an actual reduction in the apprehension of unauthorized border crossers, greater danger and expenses (mostly smugglers' fees) for unauthorized border crossers, and fewer unauthorized immigrants returning to Mexico.³⁹

Perhaps most significantly, migration has become less circular and people are remaining in the United States for longer periods of time. Not long ago, it was more common for workers to come to work in the United States seasonally or for a limited period of time and then return to Mex-

37. Jeff Zeleny, *An Issue Without Borders: The Immigration Debate, Resonating in Political Campaigns from Texas to Iowa, Creates Special Problems for the Republican Party*, CHI. TRIB., Mar. 25, 2006, at 1.

38. See PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* (2000); JOSEPH NEVINS, *OPERATION GATEKEEPER: THE RISE OF THE "ILLEGAL ALIEN" AND THE REMAKING OF THE U.S.-MEXICO BOUNDARY* 2-3 (2002); Douglas S. Massey, *Beyond the Border Buildup: Towards a New Approach to Mexico-U.S. Migration*, IMMIGR. POL'Y IN FOCUS, Sept. 2005, at 1, 2-3, available at http://www.aifl.org/ipc/infocus/2005_beyondborder.pdf; Sergio Chavez, *The Making of a Border Labor Migration System: Government Policies, Labor Markets, and Social Networks in Tijuana* (2007) (unpublished Ph.D. dissertation, Cornell University) (on file with Cornell University, Development Sociology Department).

39. See Massey, *supra* note 38, at 1, 8.

ico.⁴⁰ Recently, workers have tended to stay in the United States for a longer period of time, and more importantly, they are bringing their families with them.⁴¹ A study of farmworkers in upstate New York found that 30% of the Mexican workers in the communities studied had brought their families to the United States and that many of these families were staying year-round in the same rural communities where migrant workers historically came seasonally.⁴² Not long ago, almost all of these workers were single males who would follow the crop harvest up to New York from Florida, typically returning to Mexico for the Christmas holidays, following this cyclical work pattern for only a limited number of years before returning permanently to Mexico.⁴³ Now, their ultimate return to Mexico is less certain.⁴⁴

Several factors keep unauthorized Mexicans in the United States. One factor is simply that there are now large numbers of Mexicans who help provide social ties in communities throughout the United States. Also, about 64% of children living in unauthorized immigrant families are U.S. citizens by birth.⁴⁵ This growing presence of unauthorized immigrants places an ever greater influence on family and friends in Mexico to come to the United States, exerting the so-called network effect. Mexicans with social ties to someone living in the United States have more information and support upon which to draw and, therefore, can relocate more easily.⁴⁶ Once in the United States, these individuals further increase the network effect.

Even with increased border enforcement, the influence exerted by Mexicans living in the United States (approximately 10 million)⁴⁷ is very strong⁴⁸ and has strengthened since 1986.⁴⁹ Anti-immigrant sentiment and growing pressure to restrict immigration cause many legal permanent residents to become naturalized citizens.⁵⁰ Naturalized citizens are more easily able to bring their spouses, minor children, and parents to the United States, because such family members are not subject to immigration

40. *Id.*

41. Alejandro Portes, *Migration, Development and Segmented Assimilation: A Conceptual Review of the Evidence*, 610 ANNALS AM. ACAD. POL. & SOC. SCI. 73, 79 (2007); see DOUGLAS S. MASSEY ET AL., BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION (2002); Massey, *supra* note 38, at 8-9.

42. Pilar A. Parra & Max J. Pfeffer, *New Immigrants in Rural Communities: The Challenges of Integration*, SOC. TEXT, Fall 2006, at 81, 85-86.

43. *Id.* at 86; Massey, *supra* note 38, at 8-9.

44. See Parra & Pfeffer, *supra* note 42, at 85-89.

45. See PASSEL, *supra* note 1, at 8. An unauthorized family is a family unit in which the family head or spouse is an unauthorized immigrant. *Id.* About 41% of all unauthorized families include children, and children make up 16% of the entire unauthorized population. *Id.* at 7-8.

46. See Douglas S. Massey, *Why Does Immigration Occur? A Theoretical Synthesis*, in THE HANDBOOK OF INTERNATIONAL MIGRATION: THE AMERICAN EXPERIENCE 34, 43-44 (Charles Hirschman et al. eds., 1999).

47. Massey, *supra* note 38, at 1.

48. See Massey, *supra* note 46, at 49-50.

49. See Massey, *supra* note 38, at 6.

50. *Id.* at 5-6.

quotas.⁵¹

Proposals to establish amnesty sometimes are offered as alternatives to control unauthorized migration,⁵² but given the unintended effects of the IRCA,⁵³ amnesty for some percentage of the unauthorized immigrant population already in the United States lacks appeal as a long-term solution.⁵⁴ Altogether, almost 2.7 million persons received permanent residence permits through the IRCA.⁵⁵ Three-fourths of the undocumented immigrants applying for these residence permits were Mexicans.⁵⁶ The advantages of permanent residence status are significant: permanent residents can remain in the United States, move about the country freely in search of employment, and obtain visas for their families.⁵⁷ After the IRCA, Mexican permanent residents established networks that helped direct subsequent Mexican immigrants to employment and residential opportunities throughout the United States,⁵⁸ reinforcing the already-strong network effect. This network effect and help is evident in the growing immigrant populations in so-called nontraditional immigrant destinations like North Carolina, Georgia, Arkansas, Tennessee, and Kentucky.⁵⁹

51. *Id.* at 6.

52. See, e.g., Pia M. Orrenius & Madeline Zavodny, *Do Amnesty Programs Reduce Undocumented Immigration?: Evidence from IRCA*, 40 *DEMOGRAPHY* 437, 448 (2003) (examining effect of IRCA on flows of undocumented immigrants and finding that amnesty programs do not appear to encourage undocumented immigration); Steven Greenhouse, *Labor Urges Amnesty for Illegal Immigrants*, *N.Y. TIMES*, Feb. 17, 2000, at A26 (discussing the AFL-CIO call for blanket amnesty for immigrant workers).

53. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.).

54. See Katherine L. Vaughns, *Restoring the Rule of Law: Reflections on Fixing the Immigration System and Exploring Failed Policy Choices*, 5 *U. MD. L.J. RACE, RELIGION, GENDER & CLASS* 151, 164-65, 184-85 (2005).

55. Orrenius & Zavodny, *supra* note 52, at 437.

56. See *id.*

57. See, e.g., U.S. CITIZENSHIP & IMMIGRATION SERVS., *WELCOME TO THE UNITED STATES: A GUIDE FOR NEW IMMIGRANTS* 41, 91 (2005), available at <http://www.uscis.gov/files/nativedocuments/M-618.pdf>.

58. See FRANK D. BEAN & GILLIAN STEVENS, *AMERICA'S NEWCOMERS AND THE DYNAMICS OF DIVERSITY* 48 (2003).

59. See PANEL ON HISPANICS IN THE U.S., NAT'L RESEARCH COUNCIL, *MULTIPLE ORIGINS, UNCERTAIN DESTINIES: HISPANICS AND THE AMERICAN FUTURE* 64-66 (Marta Tienda & Faith Mitchell eds., 2006); see generally Jack G. Dale et al., *Language and the Migrant Worker Experience in Rural North Carolina Communities*, in *LATINO WORKERS IN THE CONTEMPORARY SOUTH* 93, 93-104 (Arthur D. Murphy et al. eds., 2001) (examining how language proficiency relates to housing, employment, education, and health care for Hispanic migrant workers in North Carolina); James D. Engstrom, *Industry and Immigration in Dalton, Georgia*, in *LATINO WORKERS IN THE CONTEMPORARY SOUTH*, *supra*, at 44, 44-56 (examining the interconnections among immigrants, industry, labor markets, and place); Greig Guthey, *Mexican Places in Southern Spaces: Globalization, Work, and Daily Life in and Around the North Georgia Poultry Industry*, in *LATINO WORKERS IN THE CONTEMPORARY SOUTH*, *supra*, at 57, 57-67 (finding that Mexican immigrant populations in northern Georgia have become more stable and will likely have greater influence on the rural areas where they are located); John D. Studstill & Laura Nieto-Studstill, *Hospitality and Hostility: Latin Immigrants in Southern Georgia*, in *LATINO WORKERS IN THE CONTEMPORARY SOUTH*, *supra*, at 68, 68-81 (discussing the sudden influx of Mexican immigrants in southern Georgia and the socio-cultural changes that have accompanied their arrival); Victor Zúñiga & Rubén Hernández-León, *A New Destination for an Old Migration: Ori-*

It is important to remember a few key points about IRCA that are relevant to contemporary debates. IRCA has provisions for border surveillance⁶⁰ as well as sanctions designed to discourage employers from hiring unauthorized workers,⁶¹ but these provisions are not enforced sufficiently to have their intended effects.⁶² This point is important and I will revisit it below in the discussion of the development of a more comprehensive approach to immigration policy. Funding for border control has increased, leading to the militarization of parts of the border, thereby causing persons seeking to cross the border without documents to move to areas with terrain that is more difficult to traverse and to patrol.⁶³ Although the hazardous conditions make crossing the border more dangerous, they do not make entry into the United States impossible.⁶⁴

Due to the large number of undocumented immigrants in the United States, increased law enforcement is impractical. Furthermore, the dispersion of Mexican immigrants throughout the United States in recent years makes it more difficult to conceive of effective controls for immigration.⁶⁵

B. Conditions in Mexico

Conditions in Mexico, particularly in Mexico's poor and distant rural areas, have led increasing numbers of its nationals to seek work in the United States. In Mexico, more than 25 million people live in rural areas (defined as areas with populations under 2,500 people).⁶⁶ Mexico's economic policy changes in the 1990s uniquely affected rural Mexicans. In anticipation of the adoption of the North American Free Trade Agreement (NAFTA) in 1994, the Mexican government began a series of reforms to standardize economic policy and to facilitate free trade in North America.⁶⁷ For example, "in the 1980s, the Mexican government began structural reforms in agriculture that included the privatization of *ejido*

gins, Trajectories, and Labor Market Incorporation of Latinos in Dalton, Georgia, in *LATINO WORKERS IN THE CONTEMPORARY SOUTH*, *supra*, at 126, 126-135 (describing the social process of migration and incorporation of Mexican and Latino immigrants to the labor market in Dalton, Georgia).

60. See Immigration Reform and Control Act of 1986 § 111, 8 U.S.C. §§ 1325-26 (2000).

61. See *id.* § 101, 8 U.S.C. § 1324(g)(2).

62. See Phillip Martin, *Immigrants Change the Face of Rural America*, ISSUE REP. (Farm Found., Oak Brook, Ill.), Jan. 2005, at 1, 2, available at <http://www.farmfoundation.org/Issue%20Reports/documents/FinalFinalIssueReportJanuary05.pdf>; Massey, *supra* note 38, at 4.

63. See Massey, *supra* note 38, at 4.

64. See Martin, *supra* note 62, at 2; Massey, *supra* note 38, at 4; see generally Pia M. Orrenius, *The Effect of U.S. Border Enforcement on the Crossing Behavior of Mexican Migrants*, in *CROSSING THE BORDER: RESEARCH FROM THE MEXICAN MIGRATION PROJECT 281* (Jorge Durand & Douglas S. Massey eds., 2004) (investigating the impact of increased border enforcement on undocumented migrants' choice of crossing site).

65. See Parra & Pfeffer, *supra* note 42, at 85.

66. Dorte Verner, *Activities, Employment, and Wages in Rural and Semi-Urban Mexico 2* (World Bank, Policy Research Working Paper No. 3561, 2005).

67. See Andy Gutierrez, *Codifying the Past, Erasing the Future: NAFTA and the Zapatista Uprising of 1994*, 4 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 143, 151-52 (1998).

(communal) lands and the reduction of various subsidies to agricultural producers.”⁶⁸ The policy reforms, in conjunction with the broader national economic crises of 1982 and 1994, disrupted Mexico’s agricultural economy without establishing conditions for alternative economic pursuits (e.g. investment, credit, and physical infrastructure) for the rural population.⁶⁹ In fact, over the past decade, non-agricultural employment opportunities in rural areas, as well as wages for such work, have declined.⁷⁰

In addition, sluggish growth in the Mexican economy meant that the prospect of urban employment could not effectively detract Mexicans from moving north of the border in search of better income.⁷¹ Meanwhile, average wage levels in the United States increased during that same time period. The wage differential between Mexico and the United States is large; average wages in the United States are about seven times those in Mexico.⁷² These conditions led increasing numbers of rural Mexicans to leave Mexico in search of employment in the United States.⁷³

Unauthorized Mexican migration is an important part of U.S. immigration because it is a large movement rooted in strong forces and carries a great deal of momentum. In fact, it is likely to overwhelm most immigration policy measures currently in place or proposed in ongoing discussions.

IV. A Comprehensive Policy Approach to Immigration

There are no flawless immigration control measures. Given the magnitude of the problem, it is unreasonable to think that any policy measure would not have some practical limitations. Therefore, it is important to address immigration comprehensively by linking it to other policies, such as development, labor, and social policies.

68. Parra & Pfeffer, *supra* note 42, at 84.

69. See Ranko Shiraki Oliver, *In the Twelve Years of NAFTA, the Treaty Gave to Me . . . What, Exactly?: An Assessment of Economic, Social, and Political Developments in Mexico Since 1994 and Their Impact on Mexican Immigration into the United States*, 10 HARV. LATINO L. REV. 53, 85–89 (2007).

70. See Verner, *supra* note 66, at 4, 11.

71. See *id.* at 11.

72. See Portes, *supra* note 41, at 75.

73. Marcela Cerrutti & Douglas S. Massey, *Trends in Mexican Migration to the United States, 1965 to 1995*, in *CROSSING THE BORDER: RESEARCH FROM THE MEXICAN MIGRATION PROJECT* 17, 22–26 (Jorge Durand & Douglas S. Massey eds., 2004); Agustín Escobar Latapí, *The Connection at Its Source: Changing Socioeconomic Conditions and Migration Patterns*, in *THE CALIFORNIA-MEXICO CONNECTION* 66, 66–67 (Abraham F. Lowenthal & Katrina Burgess eds., 1993), Robert C. Smith, *Mexicans: Social, Educational, Economic, and Political Problems and Prospects in New York*, in *NEW IMMIGRANTS IN NEW YORK* 275, 278–81 (Nancy Foner ed., 2001); see María da Gloria Marroni de Velázquez, *Los granos básicos en México: Una historia de modernizaciones recurrentes y crisis permanente*, in *LA CRISIS PRODUCTIVA Y FINANCIERA MEXICANA* 337, 360–61 (Alfredo Sánchez Daza ed., 1997); see also Marilyn Gates, *The Debt Crisis and Economic Restructuring: Prospects for Mexican Agriculture*, in *NEOLIBERALISM REVISITED: ECONOMIC RESTRUCTURING AND MEXICO’S POLITICAL FUTURE* 43, 45–55 (Gerardo Otero ed., 1996) (describing the failures in agricultural policy of different Mexican administrations during the 1980s and 1990s).

A. Development Policy

The lack of economic opportunities in Mexico primarily drives unauthorized migration from Mexico to the United States. This Mexico-U.S. migration parallels the worldwide migration patterns from less developed countries to wealthier countries.⁷⁴ Thus, the United States needs to consider Mexican economic development needs when crafting immigration reform. Because significant economic constraints in Mexico spur migration northward, U.S. policymakers need to give greater attention to Mexican development, particularly in rural areas. Investment in infrastructure that facilitates economic activity, therefore, is necessary to stimulate employment opportunities. The lagging investment of this sort in Mexico is one of the biggest failures of the Mexican government and NAFTA.⁷⁵

For various reasons, the Mexican government has not sufficiently invested in roads, education, sanitation, housing, or other basic services that would improve the quality of life and generate employment.⁷⁶ The United States needs to consider targeting aid at infrastructure development in rural Mexico as part of its effort to reduce unauthorized immigration.

Such assistance may be more important now than ever before. Entire families are leaving rural Mexico and settling permanently in the United States, causing some rural Mexican communities to de-populate and lose their most productive members.⁷⁷ Moreover, as families settle down in the United States, they often become less inclined to send remittances to any family members remaining in their communities of origin, thus reducing an important source of income.⁷⁸ Significant investments in rural economic development are necessary to disrupt this downward cycle.

B. Labor Policy

The United States must create more opportunities for Mexicans to work legally. The existing employment-based quota allows about 20,000 legal immigrants from Mexico, a nation of more than 100 million with which we share a border; instead, the United States should have a quota for legal immigrants from Mexico that is larger than the standard number permitted from countries that have less substantial social and economic ties with the United States.⁷⁹ In particular, the United States must provide more opportunities for foreign workers to legally work within its borders *without becoming permanent residents*. This is true for a variety of skill levels in a variety of economic sectors, but the opportunities are especially necessary in low-paying, low-skilled employment, which attracts most

74. Demetrios G. Papademetriou, Migration Policy Inst., *The Global Struggle with Illegal Migration: No End in Sight*, MIGRATION INFO. SOURCE, Sept. 1, 2005, <http://migrationinformation.org/feature/print.cfm?ID=336>; see KRITZ & GURAK, *supra* note 7, at 8.

75. Oliver, *supra* note 69, at 99.

76. See Portes, *supra* note 41, at 77-79.

77. See *id.* at 79.

78. See *id.*

79. See Massey, *supra* note 38, at 2, 9.

unauthorized immigrants. The demand for these workers needs to be acknowledged as real and legitimate.

Current employment of unauthorized workers is the most compelling evidence of this demand. More than 7 million unauthorized workers are estimated to make up about 5% of the U.S. civilian labor force.⁸⁰ Increased opportunities for temporary legal employment would reduce the pressures, costs, and dangers of unauthorized border crossing associated with illegally settling in the United States.⁸¹ This approach would re-establish earlier patterns of circular migration, encouraging workers to come to the United States to work temporarily but remain based in their home communities in Mexico.⁸² As a corollary, workers who retain ties to their home communities are more likely to continue to send remittances to Mexico, reinforcing the development policies mentioned above.⁸³ In recent years, such remittances have exceeded Mexico's national income from tourism, roughly equaled foreign direct investment, and were second only to crude oil exports as a source of foreign income.⁸⁴ In 2006 alone, Mexico received approximately \$26 billion in remittances.⁸⁵

Increased opportunities for foreign workers must be coupled with greater imposition of employer sanctions for hiring unauthorized workers and stricter enforcement of wage and employment standards. Although employer sanctions have been levied in the past, their use has steadily declined since 1990,⁸⁶ reaching levels so low that they do not deter U.S. employers from hiring unauthorized immigrants.⁸⁷ Enforcement has been undermined mainly by a shift of resources to border enforcement and national security activities, paralleling other areas of workforce standards enforcement.⁸⁸ For example, between 1975 and 2004, the number of U.S. Department of Labor, Wage and Hour Division investigators declined by 14%, while the estimated number of U.S. workers under their surveillance increased by 55%.⁸⁹ Similarly, estimates suggest that in the 1990s, the Occupational Safety and Health Administration (OSHA) invested so few resources in enforcement that it had only enough inspectors to visit each

80. See PASSEL, *supra* note 1, at 9.

81. See Massey, *supra* note 38, at 4, 8.

82. See Raúl Hernández-Coss, *The U.S. - Mexico Remittance Corridor: Lessons on Shifting from Informal to Formal Transfer Systems* 6, 30 (World Bank, Working Paper No. 47, 2005).

83. See *id.* at 30.

84. *Id.* at 4.

85. *Indicators of Recent Migration Flows from Mexico*, FACT SHEET (Pew Hispanic Ctr., Wash., D.C.), May 30, 2007, at 10, available at <http://pewhispanic.org/files/factsheets/33.pdf>.

86. Peter Brownell, *The Declining Enforcement of Employer Sanctions*, MIGRATION INFO. SOURCE, Sept. 1, 2005, <http://www.migrationinformation.org/feature/print.cfm?ID=332>.

87. *Id.*

88. *Id.*

89. Annette Bernhardt & Siobhán McGrath, *Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004*, ECON. POL'Y BRIEF (Brennan Ctr. for Justice, New York, N.Y.), Sept. 2005, at 1, 1, available at http://www.brennancenter.org/dynamic/subpages/download_file_8423.pdf.

workplace once every eighty years.⁹⁰ A recent AFL-CIO report indicates that OSHA would need to hire more than six times the total number of current inspectors to meet the International Labor Office (ILO) standard for the appropriate number of inspectors.⁹¹

Some evidence suggests that Mexican workers bear the brunt of workplace dangers. Because of their precarious legal status, undocumented migrant workers are often willing to accept undesirable, dangerous employment opportunities and are especially vulnerable to abusive employers.⁹² Evidence indicates that working conditions are deteriorating further for some Mexican workers. In 2004, the Associated Press reported that, in the mid-1990s, Mexicans were 30% more likely to suffer a workplace death than native-born workers; by 2004, they had become 80% more likely to do so.⁹³ This increased death rate for Mexican workers occurred during a time when American workplaces were becoming safer overall.⁹⁴ Although state and federal employment regulation agencies are aware of the greater vulnerability of Mexican workers, they lack sufficient resources to hire Spanish-speaking investigators.⁹⁵

Improving employment conditions and safety standards would have at least two desirable effects. First, it would reduce employer incentives to hire unauthorized workers.⁹⁶ Second, it would reduce displacement of American workers, who might be disfavored by employers as a result of the protections that they can claim remain unavailable to their unauthorized counterparts under the current legal regime.⁹⁷ Additional inspectors are necessary and could reasonably be obtained through redirection of funds currently allocated to border enforcement,⁹⁸ which is of limited effectiveness.⁹⁹

C. Social Welfare Policy

A fairly large population of unauthorized workers has settled in the United States and is likely to remain permanently. Because of the size and

90. MICHAEL PARENTI, *DIRTY TRUTHS* 13 (1996).

91. AFL-CIO, *NUMBER OF OSHA INSPECTORS BY STATE COMPARED WITH ILO BENCHMARK NUMBER OF LABOR INSPECTORS* (2007), available at http://www.aflcio.org/issues/safety/memorial/upload/_40A.pdf.

92. Andreas E. Feldmann & Helena Olea, *New Formulas, Old Sins: Human Rights Abuses Against Migrant Workers, Asylum Seekers, and Refugees in the Americas*, in *FROM THE MARGINS OF GLOBALIZATION* 129, 136-37 (Neve Gordon ed., 2004).

93. Justin Pritchard, *AP Investigation: Mexican Worker Deaths Rise Sharply Even as Overall U.S. Job Safety Improves*, ASSOCIATED PRESS, Mar. 14, 2004, http://fmmac2.mmm.ap.org/polk_awards_dying_to_work_html/DyingtoWork.html.

94. *Id.*

95. *Id.*

96. U.S. COMM'N ON IMMIGRATION REFORM, *U.S. IMMIGRATION POLICY: RESTORING CREDIBILITY* (1994).

97. David Simcox, *Immigration and Free Trade with Mexico: Protecting American Workers Against Double Jeopardy*, 14 *POPULATION & ENV'T* 159 (1992).

98. *Immigration Enforcement Spending Since IRCA*, IMMIGR. FACTS (Migration Policy Inst., Wash., D.C.), Nov. 2005, at 4, available at http://www.migrationpolicy.org/ITFI/AF/FactSheet_Spending.pdf.

99. Cerrutti & Massey, *supra* note 73, at 31-32.

wide geographic dispersal of this population, any comprehensive deportation program would be impractical.¹⁰⁰ Furthermore, about two-thirds of the children of unauthorized families are U.S. citizens.¹⁰¹ These families, thus, are more firmly anchored in the United States, and we have a responsibility to ensure that we include the children in the social and economic life of the country.¹⁰² In addition, excluding unauthorized individuals living in the United States from basic protections and privileges afforded to U.S. citizens could marginalize an entire population. Limiting opportunities available to illegal residents in this way prevents them from living according to mainstream standards and leaves their potential as social and economic resources untapped.¹⁰³

As unauthorized immigrants increasingly settle in the United States, the fate of their children becomes a major concern. A recent report of the National Research Council, *Multiple Origins and Uncertain Destinies: Hispanics and the American Future*,¹⁰⁴ illuminates this issue. As a result of continuing immigration and high Hispanic birth rates, an estimated one out of four U.S. residents will be Hispanic by 2030.¹⁰⁵ Mexican immigration to the United States primarily fuels this increase.¹⁰⁶ In comparison to other ethnic groups, Mexicans are more likely to be unauthorized, have lower education levels, and work in low-paying jobs.¹⁰⁷ These limitations may have long-term consequences for their children, whose opportunities may be limited due to their families' background and economic instability. Immigration reform must create opportunities for these families to become legal permanent residents. In addition, social welfare policies need to be more inclusive of immigrants settling in the United States.

Studies of undocumented immigrants consistently show that they are excluded from better-paying employment, private health insurance, publicly-funded health care, and quality affordable housing. These exclusions contribute to lower socio-economic standing and decreased physical well-being.¹⁰⁸ Undocumented immigrants are further disadvantaged by the

100. See RAJEEV GOYLE & DAVID A. JAEGER, CTR FOR AM. PROGRESS, DEPORTING THE UNDOCUMENTED: A COST ASSESSMENT 4, 7-8, 10 (2005), available at http://www.americanprogress.org/kf/deporting_the_undocumented.pdf.

101. PASSEL, *supra* note 1, at 8.

102. See Portes, *supra* note 41, at 90.

103. *Id.* at 88.

104. PANEL ON HISPANICS IN THE U.S., *supra* note 59.

105. *Id.* at 13.

106. *Id.* at 20.

107. *Id.* at 82, 91; see KRITZ & GURAK, *supra* note 7, at 22, 33-34.

108. See LEIGHTON KU & TIMOTHY WAIDMAN, HOW RACE/ETHNICITY, IMMIGRATION STATUS, AND LANGUAGE AFFECT HEALTH INSURANCE COVERAGE, ACCESS TO CARE, AND QUALITY OF CARE AMONG THE LOW-INCOME POPULATION 19-20 (2003), available at <http://www.kff.org/uninsured/upload/How-Race-Ethnicity-Immigration-Status-and-Language-Affect-Health-Insurance-Coverage-Access-to-and-Quality-of-Care-Among-the-Low-Income-Population.pdf>; Marc L. Berk et al., *Health Care Use Among Undocumented Latino Immigrants*, HEALTH AFF., July/Aug. 2000, at 51, 51-64; Olveen Carrasquillo et al., *Eligibility for Government Insurance if Immigrant Provisions of Welfare Reform Are Repealed*, 93 AM. J. PUB. HEALTH 1680, 1680-81 (2003); Gilberto Granados et al., *Health Care for Latino Children: Impact of Child and Parental Birthplace on Insurance Status and Access to Health*

effects of ethnic prejudice in a variety of domains, including medical care, employment, and housing.¹⁰⁹

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹¹⁰ and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996¹¹¹ further restricted undocumented immigrants' access to federally-funded public benefits. Today, these individuals can access only emergency medical services and short-term community services, such as crisis counseling, homeless shelters, and soup kitchens.¹¹²

D. Local Policies

Although increased immigration bears significant ramifications at the national, regional, and state levels, most Americans experience the effects of immigration at the local level—in their towns and communities.¹¹³ These locally-based concerns become more salient as the number of immigrants, especially from Mexico, increases and spreads to new destinations throughout the United States.¹¹⁴ As indicated above, these immigrants are

Services, 91 AM. J. PUB. HEALTH 1806, 1806-07 (2001); Ted Joyce et al., *Welfare Reform and the Perinatal Health and Health Care Use of Latino Women in California, New York City, and Texas*, 91 AM. J. PUB. HEALTH 1857, 1857-64 (2001).

109. See generally PANEL ON RACIAL & ETHNIC DISPARITIES IN MED. CARE, PHYSICIANS FOR HUMAN RIGHTS, THE RIGHT TO EQUAL TREATMENT: AN ACTION PLAN TO END RACIAL AND ETHNIC DISPARITIES IN CLINICAL DIAGNOSIS AND TREATMENT IN THE UNITED STATES (2003), available at <http://physiciansforhumanrights.org/library/documents/reports/report-rightequal-treat-2003.pdf> (discussing racial and ethnic disparities in medical care); Ellen Percy Kraly et al., *U.S. Immigration Policy and Immigrant Integration: Occupational Mobility Among the Population Legalizing Under IRCA*, in IMMIGRATION TODAY: PASTORAL AND RESEARCH CHALLENGES 82, 106 (Lydio F. Tomasi & Mary G. Powers eds., 2000) (discussing immigrants' employment opportunities in the United States); Arun Peter Lobo & Joseph J. Salvo, *The Role of Nativity and Ethnicity in the Residential Settlement Patterns of Blacks in New York City, 1970-1990*, in IMMIGRATION TODAY: PASTORAL AND RESEARCH CHALLENGES, *supra*, at 107 (discussing residential racial segregation).

110. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 7, 8, 21, 25, and 42 U.S.C.).

111. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546 to 3009-724 (1996) (codified as amended in scattered sections of 7, 8, 15, 18, 20, 22, 28, 32, 42, 50 U.S.C.) (minimizing judicial review of immigration decisions, expanding grounds for deportation and nonadmission of immigrants, and redefining concept of entry).

112. See Joyce et al., *supra* note 108, at 1857; Sana Loue et al., *The Effect of Immigration and Welfare Reform Legislation on Immigrants' Access to Health Care, Cuyahoga, and Lorain Counties*, 2 J. IMMIGR. HEALTH 23, 23-24 (2000).

113. See generally Kareem Fahim, *Should Immigration Be a Police Issue?*, N.Y. TIMES, Apr. 29, 2007, at 14NJ (discussing immigration law enforcement in towns and small cities near New York City); Kotlowitz, *supra* note 4, at F30 (discussing local governments' efforts to discourage illegal immigration).

114. See WILLIAM KANDEL & JOHN CROMARTIE, U.S. DEP'T OF AGRIC., NEW PATTERNS OF HISPANIC SETTLEMENT IN RURAL AMERICA iii-iv (2004), available at <http://www.ers.usda.gov/publications/rdr99/rdr99.pdf> (noting growth of Hispanic populations in rural areas and the disproportionate number of undocumented immigrants from Mexico within this population); Rachel L. Swarns, *The Latino South: A County In Transition*, N.Y. TIMES, Aug. 4, 2006, at A1 (describing the influx of Latin-American immigrants to small towns in Georgia).

increasingly becoming long-term residents of their new communities.¹¹⁵ Given this trend, it is important to consider how the existing communities and the new residents will adapt to each other.

Language skills are of immediate concern to communities that seek to include new immigrants. Limited language ability constrains labor market opportunities. Furthermore, the first generation's communication challenges and consequently limited economic opportunities bear significant implications for the second generation and beyond.¹¹⁶ Community efforts to promote language training could play an important part in integrating immigrants into the social and economic life of the community and strengthening the available labor pool.¹¹⁷ Moreover, communities must prioritize educating the immigrants' children. As the native-born population ages, second-generation immigrants will reach working age. Investing in their education will enhance their ability to fund social services for the aging population and contribute to their communities' general economic vitality.¹¹⁸

Communities have responded to immigration in a wide variety of ways. Mirroring the strong concerns about unauthorized immigration voiced in national policy debates, some communities have adopted policies to exclude immigrants. Nevertheless, there are also many encouraging examples of localities adopting inclusive education, law enforcement, community planning, housing, and other policies to accommodate immigrants.¹¹⁹ Because current national policies are ineffective and national immigration policy reform is absent, local policies that address immigra-

115. See Swarns, *supra* note 114, at A1 (explaining that immigrants came to rural Georgia for agricultural work and settled permanently).

116. See Francisco L. Rivera-Batiz, *English Language Proficiency and the Earning of Young Immigrants in U.S. Labor Markets*, 11 POL'Y STUD. REV. 165, 173 (1992) ("English language deficiency acts to depress the wages of immigrants substantially below what their other human capital endowments—education, on-the-job-experience—suggest they should earn in the U.S. labor market."); see also Hoyt Bleakley & Aimee Chin, *What Holds Back the Second Generation?: The Intergenerational Transmission of Language Human Capital Among Immigrants 3* (Ctr. for Comparative Immigration Studies, Working Paper No. 104, 2004), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1030&context=3is> (finding that parental English language skills can account for 60% of the difference in the drop out rate between non-Hispanic whites and second generation Hispanic immigrants).

117. See DORIS MEISSNER ET AL., MIGRATION POLICY INST., IMMIGRATION AND AMERICA'S FUTURE: A NEW CHAPTER 75-76 (2006) (listing advantages that English language competency provides for immigrants).

118. See JOSEPH FISHKIN ET AL., CONN. VOICES FOR CHILDREN, IMMIGRATION IN CONNECTICUT 9 (2005), available at <http://www.ctkidslink.org/publications/econ05immig01.pdf> (listing economic advantages that immigrants bring to a state with an aging population); PANEL ON HISPANICS IN THE U.S., *supra* note 59, at 60-64 (describing benefits of immigration of Hispanic youth).

119. See, e.g., Tyche Hendricks, *Immigrant Advocates Blast Raids, Crackdown*, S.F. CHRON., Feb. 22, 2007, at B1 (describing San Francisco's policy of giving sanctuary to illegal immigrants by forbidding city employees from using city resources to assist in the enforcement of federal immigration law); Michele Wucker, *A Safe Haven in New Haven*, N.Y. TIMES, Apr. 15, 2007, at 141I (contrasting New Haven's policy of providing municipal identification cards and educational services to undocumented immigrants with municipalities that have implemented more punitive policies).

tion issues are likely to become more common and more important to effectively include immigrants in society. Accordingly, localities will continue to be at the front lines of the struggle to integrate immigrants socially and economically.

Conclusion

Without a more comprehensive approach, U.S. immigration policy will continue to be ineffective. Unauthorized immigration will continue, expanding a new underclass that will continually be excluded from mainstream American social and economic life. There will be long-term costs, borne by marginalized immigrants as well as society at large. To avoid this result, we must reevaluate our immigration policy and other related issues together in order to take a more comprehensive approach to immigration and thereby improve opportunities for foreigners to work in the United States legally.