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IMPROVING US AND EU IMMIGRATION SYSTEMS

Obstacles and Opportunities for Regional Cooperation: The US-Mexico Case

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By Marc R. Rosenblum

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Executive Summary

Migrant-source countries such as Mexico feel the effects of destination-country immigration policies and are uniquely positioned to influence certain migration outcomes, but migrant-sending and migrant-receiving countries rarely collaborate on migration issues. Bilateral approaches to managing migration are unusual for at least four reasons: the international norm of state sovereignty defines migration as a domestic issue, sending and receiving countries have inherently divergent interests on certain core migration questions, net migration flows are predominantly one-directional so that any migration negotiations are asymmetrical, and the complex domestic politics of migration make international negotiations challenging.

The history of the US-Mexican relationship demonstrates that cooperation on migration issues is difficult — but not impossible. Before World War II and for most of the post-war period, both states favored unilateral migration policies — or no policy at all — because they were reasonably satisfied with market-based flows or preferred policy changes the other state opposed. But the United States needed Mexico's help to insure adequate guestworker flows during World War II and the Korean War, giving Mexico substantial influence over the Bracero Program (1942-64) during the wartime years. And since the 1990s, the United States and Mexico have worked together to promote orderly enforcement at the US-Mexican border.

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These examples offer lessons about when sending and receiving countries may have reasons to seek cooperative approaches. Migration collaboration makes sense when states share common goals that they cannot achieve on their own and when the broader strategic context favors cooperation. Successful cooperation also is more likely to emerge incrementally, by building on existing programs and working through standing institutional forums.

US-Mexican cooperation on migration has been more limited since the 9/11 attacks, and the economic downturn, drug-related violence in Mexico, and polarized politics of migration in the United States all represent substantial challenges to developing new bilateral migration mechanisms. But policymakers should consider cooperative approaches to four key migration policy issues: border management, regulation of labor brokers, credentialing and implementation of migrant selection criteria, and job creation in communities of origin (co-development).



I. Introduction

International migration is a defining feature of the contemporary era of globalization, as the world's migrant population increased from about 75 million in 1960 to an estimated 214 million in 2010.¹ Yet the pace of these changes has not been matched by proportional growth in effective policies to manage migration, especially at the international level. On the contrary, with the exception of certain aspects of migration enforcement and border security, migrant-sending and migrant-receiving countries rarely collaborate to manage migration flows. And at a time of ever more sophisticated cooperation to regulate most types of international flows, such as trade and investment, migration policy is greatly characterized by unilateralism and — perhaps not coincidentally — by policy failures.²

Why has cooperation between sending and receiving countries been unusual? Could migration partners such as the United States and Mexico better manage their migration systems through a collaborative approach? Does the sporadic history of US-Mexican cooperation on migration policy offer lessons for policymakers today?

This report identifies four key obstacles to collaboration in this area: the norm of state sovereignty, divergent interests between sending and receiving countries, asymmetric migration flows, and the complexity of migration as a domestic political issue. Yet a review of the US-Mexico case confirms that these barriers are not insurmountable: while migrant-receiving states usually act alone in this area, important exceptions exist. This history offers lessons for today's policymakers in the United States and Europe and their migration partners in North America, North Africa, and Eastern Europe. Countries at both ends of these migration systems could benefit from a more collaborative approach to managing migration by finding linkages across different elements of migration policy, but the complexity of migration within sending and receiving countries remains an important obstacle to achieving such gains.

II. Migration Policy and Migrant-Sending Countries

In general, immigration policy is independently set by migrant-receiving countries (such as the United States), but countries of origin (such as Mexico) feel its effects and so care about receiving-state policy choices. Receiving-country immigration policies help determine the number and skills profile of those who emigrate, and so shape the demographics and labor market dynamics of those who stay behind. And immigrant remittances are an important source of hard currency for immigrant-sending countries, in many cases representing the single largest source of foreign exchange.³ Conversely, migration enforcement disrupt emigrant employment, eliminating potential remittance flows, and deportations often return migrants into the same saturated labor markets that contributed to illegal outflows in the first place. Nor is migration just an economic issue. For high-emigration states such as Mexico and El Salvador — where emigrants represent 10 percent and 20 percent of the national

1 United Nations (UN), Department of Economic and Social Affairs, Population Division, *Trends in International Migrant Stock: The 2008 Revision* (New York: Department of Economic and Social Affairs, 2009), www.un.org/esa/population/migration/UN_MigStock_2008.pdf.

2 On the absence of global migration institutions, see Alexander Betts, ed., *Global Migration Governance* (New York: Oxford University Press, 2011); and Bimal Ghosh, ed., *Managing Migration: Time for a New International Regime?* (New York: Oxford University Press, 2000).

3 In 2009, Mexico received about \$22.1 billion in remittances, 2.5 percent of the country's gross domestic product (GDP). India was the world's largest remittance-receiving state, with \$49.2 billion (3.9 percent of GDP), but remittances are a much larger share of GDP for several small countries, such as Tajikistan (35.1 percent of GDP, \$1.7 billion), Tonga (27.7 percent, \$87 million), and Lesotho (24.8 percent, \$450 million). See World Bank, *Remittances Data: Outlook for Remittance Flows 2011-12* (Washington, DC: The World Bank Group, 2010), <http://go.worldbank.org/QOWEWD6TA0>.



population respectively — admissions rules and migration-control efforts touch the lives of virtually everyone left behind. For these reasons, US enforcement efforts are often front-page news in Mexico and other migrant-sending countries.⁴

Countries of origin also have substantial ability to influence migration outcomes. Indeed, the actions of migrant-source countries may affect virtually every aspect of the migration system:

- **Migrant admission.** Any selective immigration policy requires mechanisms to identify and recruit potential candidates for migration. Migrant-source countries may facilitate recruitment in communities of origin and assist in screening applicants.⁵
- **Return migration.** Source countries play an important role in the success or failure of temporary or circular migration policies by creating the conditions for return migration, including the legal conditions for re-entry as well as the broader social, political, and economic conditions facilitating return flows.
- **Migration enforcement.** While migration enforcement policies usually are defined by host states, countries of origin may decisively influence enforcement outcomes. Within destination states, consular networks and other sending-state officials may work with migration enforcement authorities to identify unauthorized immigrants, safeguard migrant rights, and ensure orderly enforcement. At the border, countries of origin may collaborate with receiving countries on enforcement and humanitarian efforts at and between ports of entry. Countries of origin are uniquely positioned to expand migration control beyond the border by screening passengers and cargo before they reach ports of entry, to police against illegal transmigration, and to share information about transnational criminal activities and security threats. And countries of origin also are uniquely positioned to determine the ultimate result of migration enforcement efforts by either admitting or denying access to would-be deportees.⁶

More generally, and perhaps more importantly, countries of origin also may influence migration outcomes through policies *unrelated* to migration per se. There is a broad consensus among economists that the best long-term strategy for reducing global migration — legal and illegal — is to improve economic opportunities in developing countries, though development is destabilizing in the short run and may produce a temporary surge in migration outflows.⁷ Mexico and other migrant-sending countries have actively developed programs to partner with diaspora communities to promote development and job creation in communities of origin, though they have struggled to attract investors and not all diaspora entrepreneurship contributes efficiently to job creation.⁸

- 4 E.g. José Luis Ruiz, “Preocupa a México vigilancia militar en frontera,” *El Universal*, May 16, 2006, www.eluniversal.com.mx/nacion/138384.html; Xóchitl Alvarez, “Lujambio: hay que alzar voz contra ley de Arizona,” *El Universal*, May 9, 2010, www.eluniversal.com.mx/nacion/177606.html; Jorge G. Castañeda, “Reforma migratoria o más masacres,” *Reforma*, September 2, 2010, <http://jorgecastaneda.org/index.php?newsId=58823B72-872A-ACA7-D1C6-D2EE6E4EE29C>. Also see Traci Carl, “Mexico Blasts U.S. Immigration Policies,” *Washington Post*, September 2, 2007, www.washingtonpost.com/wp-dyn/content/article/2007/09/02/AR2007090200958.html.
- 5 Immigrant recruitment also implies freedom to *emigrate*. Most European states limited exits throughout the mercantilist era (1500-1800), and in many cases discouraged the emigration of skilled craftsmen well into the 19th century. In the modern era, the Soviet bloc imposed exit controls until 1990, and many authoritarian regimes such as Cuba, Syria, and North Korea continue to restrict exits, often for political rather than economic reasons.
- 6 States are obligated under international law to readmit their own nationals, and usually do so when immigrants have valid travel documents, but they may drag their feet when it comes to issuing travel and identity papers to unauthorized immigrants, whose identity and nationality may be disputed; see Antje Ellermann, “The Limits of Unilateral Migration Control: Deportation and Interstate Cooperation,” *Government and Opposition* 43 (2) (2008): 170, www.politics.ubc.ca/fileadmin/template/main/images/departments/poli_sci/Faculty/ellermann/G_O.pdf.
- 7 Commission for the Study of International Migration and Cooperative Economic Development (Asencio Commission), *Unauthorized Migration: An Economic Development Response* (Washington, DC: US Government Printing Office, 1990), <http://cidbimena.desastres.hn/docum/crid/Febrero2005/pdf/eng/doc84/doc84.htm>; Philip Martin and Thomas Straubhaar, “Best Practices to Reduce Migration Pressures,” *International Migration* 40 (2002): 5–23.
- 8 Kathleen Newland and Hiroyuki Tanaka, *Mobilizing Diaspora Entrepreneurship for Development* (Washington, DC: Migration Policy Institute and US Agency for International Development, 2010), www.migrationpolicy.org/pubs/diasporas-entrepreneurship.pdf.



III. Barriers to Migration Cooperation

Migrant-source countries thus have the incentive and the capacity to influence migration outcomes, but sending and receiving states rarely collaborate on migration policy. At least four factors discourage cooperative approaches to migration policymaking: the norm of sovereignty, divergent migration preferences, asymmetric influence over outcomes, and the complexity of migration policy.

A. Sovereignty

The international legal system is organized around the idea of sovereign nation-states: legal entities defined by mutual recognition and by the government's exclusive control of a geographic territory and its population.⁹ The concepts of borders and territorial closure are at the heart of this definition — states are defined by their ability to identify their own citizens and to exclude others.¹⁰

The norm of sovereignty — the right of states to close their territory — is an important check on migration collaboration. At the global level, sovereignty means that international migration laws and institutions such as the 1951 UN Convention on Refugees and the International Labor Organization make no binding demands on whom states admit or how visa policies are structured. The recognition of migration policy as a sovereign domestic issue also makes countries of origin reluctant to place migration on the agenda for bilateral or regional negotiations, because doing so may broaden the scope of negotiations to include sensitive political questions that they prefer to leave outside the scope of international negotiations, such as policies related to their own human rights conditions or internal political processes.

B. Divergent Preferences

The structure of global migration systems ensures that migrant-sending and receiving countries often disagree about core migration policy issues.

First, even though migration partners usually have complementary demographics, as in the US-Mexico case, demographic complementarities are rarely perfect, which means source and destination countries typically disagree about the ideal number of immigrants and the distribution of migrants' skills and human capital. Labor-rich countries typically benefit from robust emigration outflows, which limit domestic unemployment and generate cash remittances.¹¹ Destination countries generally benefit from maximizing the human capital of those who migrate,¹² while countries of origin may worry about "brain drain"¹³ and prefer that migration consist mainly of low- or middle-skilled workers.¹⁴ Apart from these divergent long-term preferences, business cycles also tend to produce opposing migration demands in

9 Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999).

10 James A. Hollifield, "The Emerging Migration State," *International Migration Review* 38 (3) (2004): 885-912, www.allacademic.com//meta/p_mla_apa_research_citation/0/6/9/3/7/pages69370/p69370-1.php.

11 Devesh Kapur and John McHale, "Migration's New Payoff," *Foreign Policy* 139 (2003): 48-57; Dilip Ratha, "Leveraging Remittances for Development" in *Migration, Trade, and Development*, eds. Pia Orrenius and James Hollifield (Dallas, TX: Federal Reserve Bank, 2008), <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/LeveragingRemittancesForDevelopment.pdf>.

12 Demetrios Papademetriou, Will Somerville, and Hiroyuki Tanaka, "Talent in the 21st Century Economy," in *Talent, Competitiveness, and Migration*, eds. Bertelsmann Stiftung and Migration Policy Institute (MPI) (Guetersloh, Germany: Bertelsmann Stiftung, 2009): 215-66.

13 "Brain drain" refers to the emigration of a large number of a country's highly skilled and educated population to other countries that offer superior economic and social opportunities. For more on brain drain and brain waste, see Jeanne Batalova and Michael Fix, *Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States* (Washington, DC: MPI, 2008), www.migrationpolicy.org/pubs/BrainWasteOct08.pdf.

14 Philip L. Martin, Susan F. Martin, and Patrick Weil, *Managing Migration: The Promise of Cooperation* (New York: Lexington Books, 2006): 230.



migrant-sending and receiving countries.¹⁵ Finally, sending and receiving countries often disagree about the conditions of migration, which include migrants' labor rights and incentives for return migration.

Sending and receiving countries are even more prone to conflict over migration-control measures. Deportation is inherently costly for migrant-source countries, which must reabsorb people who typically have fled poor labor markets in the first place. By definition, migration enforcement impedes emigrants' freedom of movement, and many enforcement tools conflict with migrants' basic human rights. Deportations of vulnerable populations (e.g., children, disabled persons) and high-risk groups (e.g., criminals or suspected terrorists) are especially contentious at both ends of the migration chain.

C. Asymmetric Flows

In contrast with global trade and investment, net migration flows are predominantly one-directional — i.e., generally from poor states to rich states.¹⁶ This asymmetry means that migrant-sending and receiving countries are not equally dependent on cooperative institutions to achieve efficient labor market outcomes and that they have different abilities to influence migration flows.

In the absence of migration restrictions, efficient global labor markets generally result in migration from labor-rich to labor-scarce countries. Thus, given that the world is labor-rich, wealthy states enjoy a “buyer’s market” for workers and do not depend on cooperation from countries of origin to ensure adequate labor inflows.¹⁷ On the contrary, immigrant-receiving countries can best promote efficient migration flows simply by eliminating their own restrictive policies. Migrant-source countries usually have little corresponding ability to shape outflows. These dynamics mean that any bilateral migration negotiations are also asymmetrical, and that states cannot negotiate migration agreements on the basis of simple reciprocity.

D. Complexity of Migration Policy

A final barrier to migration cooperation is the complexity of migration policy within host and source states. Although immigration generally benefits host-state economies, it harms some native workers and imposes some short-term costs — and many voters see migration as a net negative. The economics of *emigration* are also controversial, with some sending-country constituencies more concerned about the costs of brain drain than the benefits of reduced employment pressure and remittance inflows.

More importantly, in contrast with other international issues such as trade, investment, and currency regimes, migration policy redefines demographics, culture, and politics. Questions about national identity often weigh more heavily than economics in shaping attitudes about migration.¹⁸ Migration may also affect national security, and the United States (like other countries) has always tried to exclude or deport potential hostile agents.¹⁹ Questions about identity, immigrant integration, and security may

15 For example, an economic downturn in the United States and Mexico may be associated with lower demand for immigration within the United States, but also with rising unemployment and greater need for emigration in Mexico.

16 While most family- and employment-based migration consists of these “south-north” flows, most humanitarian migration is “south-south.” South-north migration systems often have substantial return migration as well, but net flows are predominantly one-directional.

17 Put another way, there is no demand for collective action between sending and receiving countries; see Bimal Ghosh, *Managing Migration: Whither the Missing Regime* (New York: United Nations Educational, Scientific and Cultural Organization, 2005); and Eytan Meyers, “The Causes of Convergence in Western Immigration Control,” *Review of International Studies* 28 (2002): 123-41.

18 Joel S. Fetzer, “Public Opinion and Populism,” in *Oxford Handbook on International Migration*, eds. Marc R. Rosenblum and Daniel J. Tichenor (New York: Oxford University Press, forthcoming).

19 The *US Immigration Act of 1903* denied admission to “anarchists, or persons who believe in, or advocate, the overthrow by force or violence the government of the United States ... or the assassination of public officials;” the *Internal Security Act of 1950* denied admission to present and former members of the Communist Party. See *Immigration Act of 1903* (32 Statutes-at-Large 1213) and *Internal Security Act of 1950* (64 Statutes-at-Large 987).



also overlap, as recent terrorist incidents involving first- and second-generation immigrants in Europe and the United States make clear.²⁰

For all these reasons, immigration policy is famously characterized by “cross-cutting” cleavages, with business and liberal groups typically favoring more open migration policies and labor unions and social conservatives favoring migration restrictions.²¹ These unusual alliances create complex party dynamics with respect to migration policymaking, and domestic political disagreements at both ends of the migration chain are major barriers to finding common ground between sending and receiving countries.

IV. The US-Mexico Case

The US-Mexico case epitomizes both the challenges of binational migration cooperation and the great potential for gains from collaboration. On one hand, Mexico and the United States represent the single largest migration dyad in the world,²² a fact which implies a strong *prima facie* case for large gains from a collaborative approach to managing migration. Well-developed trade and investment links are at the heart of a dense bilateral institutional structure, creating a potential forum for migration conversations and potential connections between migration and other bilateral policy issues. On the other hand, the scope of Mexico-US migration flows and the complexity of the bilateral relationship and politics of migration within both countries make the effort to seek a collaborative approach especially difficult.

Migration relations between the United States and Mexico went through three main phases between the late 19th century and the 1990s: mostly *laissez faire* policies prior to World War II, with both countries imposing modest unilateral controls; a brief period of managed migration giving way to a veneer of bilateralism during the wartime Bracero Program; and a “policy of no policy” in Mexico and de facto acquiescence to illegal migration in the United States beginning in the 1960s through the 1990s. The late 1990s through 2001 marked a fourth phase in relations, an apparent turning point, as the two countries took small but significant steps toward a more collaborative approach, culminating in a breakthrough agreement to begin comprehensive bilateral migration negotiations in September 2001. The terror attacks later the same month derailed those negotiations, however, and while the two countries continued to cooperate on a number of enforcement measures, they have failed to place broader migration issues back on the table.

A. Ambivalent Preferences and Unilateral Enforcement: 1890s through World War II

Both the United States and Mexico had ambivalent preferences about migration across their shared border during the late 19th and early 20th centuries.²³ In the United States, sustained demand for labor

20 E.g., the 2004 Madrid train bombings (a mix of first- and second-generation immigrants, plus some without immigrant connections), the 2005 London Underground bombings (three second-generation immigrants; one first-generation), and the 2009 Fort Hood, Texas mass shooting (a single second-generation immigrant).

21 See Marc R. Rosenblum, *US Immigration Policy since 9/11: Understanding the Stalemate over Comprehensive Immigration Reform* (Washington, DC: MPI, forthcoming).

22 World Bank, *Migration and Remittances Factbook 2011*, 2nd edition (Washington, DC: The World Bank, 2011), <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>.

23 On the history of US immigration policy during this period, see Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton, NJ: Princeton University Press, 2002); Aristide Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge, MA: Harvard University Press, 2008). On Mexican migration policy during this period, see David Fitzgerald, “Inside the Sending State: The Politics of Mexican Emigration Control,” *International Migration Review* 40 (2) (2006): 259-93, <http://ccis.ucsd.edu/wp-content/uploads/2009/12/Fitzgerald-2006.IMR.pdf>; Marc R. Rosenblum, “The Intermestic Politics of Immigration Policy: Lessons from the Bracero Program,” *Political Power and Social Theory* 16 (2003): 139-82.



inflows produced *laissez faire* immigration policies for most of the 19th century. Beginning in the 1890s, the closing of the American frontier, the economic upheaval of the Industrial Revolution, and the emergence of new migration-source states in Asia and Southern and Eastern Europe produced strong demand for immigration restrictions. Calls for new restrictions intensified after 1900, and particularly during World War I, as a result of security concerns about European radicalism. But US agricultural groups in the Southwest lobbied to preserve their access to Mexican migrant workers, who had worked in parts of Texas and California — formerly Mexican territory — for generations. Demands for restrictions on Mexican migrants also were muted by the stronger seasonal pattern of these flows (i.e., because many Mexicans returned home each year) and by diplomatic considerations.²⁴ For these reasons, while US attitudes about immigration in general trended strongly toward restrictionism in the half-century after 1890, Mexican immigration was not the primary focus.

In Mexico, ambivalent preferences reflected a tension between the state's dependence on emigration as a source of employment and a political "safety valve,"²⁵ and its own rural development plans, which depended on an abundant workforce at home — a considerable concern after the loss of life in the Mexican Revolution (1910-20). Emigration to the United States in particular raised additional concerns in the wake of the US seizure of Mexican territory in the Mexican-American War from 1846 to 1848, its incursions into Mexico from 1914 to 1917, and persistent discrimination against Mexican workers in the United States. For these reasons, while a 12-to-1 wage gap translated into substantial demand for emigration on the part of Mexican workers, most educated Mexicans were opposed to generous emigration flows.²⁶

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These ambiguous preferences shaped policy outcomes on both sides of the border. Even as US restrictions eliminated most Asian and European migration, Mexican immigrants initially were left unhindered. When a new immigration law in 1917 threatened to slow Mexican inflows during World War I, the Wilson administration announced special rules to exempt Mexican agricultural workers from the new law's head tax, literacy test, and contract labor restrictions, establishing the country's first guestworker program.²⁷ The wartime program was expanded to nonagricultural workers in 1918, and guestworker recruitment continued until 1920. About 73,000 Mexicans were admitted through the program, with about half recording a return to Mexico.²⁸ Mexicans and other Latin Americans were also exempted from the race-based national origins system, which imposed numeric limits on Eastern

24 Under Presidents Herbert Hoover (1929-32) and Franklin Roosevelt (1933-45), the United States made outreach to Latin America a high priority in what eventually became known as the Good Neighbor Program; both administrations worried that migration restrictions would damage regional relations; see Mark Reisler, *By the Sweat of Their Brow: Mexican Immigrant Labor in the United States, 1900-1940* (Westport, CT: Greenwood Press, 1976); Rosenblum, "The Intermestic Politics of Immigration Policy," 139-82.

25 Emigration relieves political pressure on poorly performing countries of origin because some dissatisfied constituents elect to emigrate rather than press for economic or political reforms at home — choosing "exit" over "voice," in the classic social science formulation. See Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

26 Lawrence Cardoso, "Labor Emigration to the Southwest, 1916 to 1920: Mexican Attitudes and Policy" in *Mexican Workers in the United States: Historical and Political Perspectives*, eds. George C. Kiser and Martha Woody Kiser (Albuquerque: University of New Mexico Press, 1979): 20. Also see Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin: University of Texas Press, 1971); Rosenblum, "The Intermestic Politics of Immigration Policy;" Fitzgerald, "Inside the Sending State."

27 Mark Reisler, *By the Sweat of Their Brow*.

28 By comparison, there were about one-half million Mexican-born US citizens and lawful permanent residents at this time, according to US Census data; Reisler, *By the Sweat of Their Brow*.



Hemisphere immigrants in the *Emergency Quota Act of 1921* and later in the *Immigration Act of 1924*. Still, under pressure from Congress, the Coolidge administration issued new visa guidelines in 1928, leading to a 75 percent reduction in Mexican immigration. As well, hundreds of thousands of Mexicans were deported during the Great Depression in what was known as the Mexican Repatriation.²⁹

On the Mexican side, both the 1917 Constitution of Mexico and the *Federal Labor Law of 1931* established strong worker protections, including safeguards for migrant workers. But the constitution also required that exiting migrants comply with national migration laws, and a 1926 law required contract workers to get the approval of municipal authorities before receiving exit visas. Mexican Presidents Venustiano Carranza and Lázaro Cárdenas organized major public relations campaigns from 1916 to 1920 and during the 1930s to discourage Mexican emigration; and Presidents Cárdenas and Manuel Camacho also funded “colonization” programs in the 1930s and early 1940s to pay for return migration and to provide migrants with free land in Mexico. Overall, between Mexican and US efforts, southbound US-Mexican migration exceeded northbound flows during the 1930s by several hundred thousand people, the only decade for which this has been the case.

B. The Bracero Program: 1942-64

World War II marked a turning point in the US-Mexican relationship — the bilateral migration relationship in particular.³⁰ From the US perspective, the start of the war provoked serious concerns about labor shortages as traditional migration flows had been disrupted during the 1930s, and growth in US manufacturing and the military draft led to a sharp reduction in the agricultural workforce. At the same time, the United States was concerned about Mexico’s relationship with Germany, which had flourished after the United States and England boycotted Mexican oil sales to protest Mexico’s 1936 nationalization of foreign oil leases. Even after migration resumed in the 1940s, the start of the Korean War provoked renewed concerns about agricultural labor shortages and questions about Mexico’s commitment to anti-Communism efforts. With the end of the Korean War, however, the US debate about guestworkers adhered to more traditional interest-group dynamics, with business groups and most Republicans favoring generous labor inflows and labor unions and most Democrats opposing them.

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On the Mexican side, the immediate prewar period marked a high point in the country’s skepticism about the benefits of emigration. In addition to the country’s general antipathy toward the United States in the wake of the oil controversy and under the leftist President Cardenás, Mexicans resented America’s rough treatment of immigrants during the Depression. Nonetheless, with the resumption of migration flows in the 1940s, Mexico became increasingly dependent on migrant remittances, and corrupt officials benefited from their control over exit visas.³¹ Mexico’s economic dependence on emigration intensified throughout the 1950s and 1960s as its “stabilizing development” economic program promoted urbanization over agricultural production.

²⁹ Estimates of the total number of deportations range from 400,000 to 1 million; see Robert Divine, *American Immigration Policy, 1924-1952* (New Haven, CT: Yale University Press, 1957); Kevin R. Johnson, “The Forgotten ‘Repatriation’ of Persons of Mexican Ancestry and Lessons for the ‘War on Terror’” *Pace Law Review* 26 (1) (2005): 1-26. Johnson reports that as many as 60 percent of the people deported to Mexico in the 1930s may have been native born or naturalized US citizens, <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1147&context=plr>.

³⁰ In general, this section draws on Rosenblum, “The Intermestic Politics of Immigration Policy;” Kitty Calavita, *Inside the State: The Bracero Program, Immigration and the I.N.S.* (New York: Routledge, 1992); Craig, *The Bracero Program*.

³¹ Mexican officials are estimated to have earned more than \$7.2 million in bracero bribes in 1957, about \$20 per worker; see Craig, *The Bracero Program*: 135.



In 1942 the United States and Mexico signed a formal agreement to establish a new agricultural migrant worker program, which became known as the Bracero Program.³² The agreement established exceptionally favorable terms for Mexican immigrants: Mexican workers were guaranteed a minimum wage (unlike American farm workers) as well as transportation, housing, and health benefits. Bracero contracts were co-signed by US and Mexican government officials, and Mexican consuls in the United States helped oversee their enforcement. US growers pushed to relax certain program requirements, including Mexico's demand that no *braceros* (laborers) be admitted for work in Texas, which was seen as particularly hostile to migrant-worker rights, but the Roosevelt administration repeatedly sided with Mexico in disputes about the program.

Congress refused to reauthorize the bilateral program in 1947, and the Bracero Program reverted to the World War I model: private contracts between employers and immigrants, with no Mexican oversight authority. Mexico demanded a return to state-to-state contracting in 1951 and pushed the United States to combat exploitation (i.e., to ensure that immigrants benefited from Bracero contracts) by making it illegal to hire unauthorized workers. When Congress passed legislation the following year to combat illegal migration, the law made it illegal to “harbor” unauthorized immigrants, but the so-called “Texas Proviso” explicitly exempted employers from penalties under the law.

Mexico again demanded additional authority over immigrant recruitment and oversight in 1953, and sought to terminate the program by preventing migration outflows when talks broke down in January 1954. But US agents continued admitting workers over Mexican objections — while also deporting about 1 million unauthorized Mexican immigrants in the so-called “Operation Wetback” campaign³³ — and Mexico was forced to renegotiate the agreement on American terms. Thus, despite the Bracero Program's early promise as a bilateral template for managing regional labor flows and protecting workers' rights, in the postwar period the program included weak, at best, worker protections; and Mexican and US immigration officials were seen as broadly complicit in a scheme to provide US employers with an easily exploited workforce.

C. Unilateralism and the Emergence of the Contemporary US-Mexico Migration System: 1965-96

The Bracero Program had a lasting impact on US and Mexican migration preferences. Growers in the US Southwest — and eventually employers in other low-skilled sectors — adjusted their production models to depend increasingly on low-wage Mexican workers. Whole communities in Mexico relied on emigration as their primary source of employment. And an industry of labor contractors emerged in Mexico and the United States to match willing workers with willing employers. Thus, on both sides of the border, the Bracero Program reestablished and reinforced the pushes, pulls, and social networks that motivate regional migration flows.³⁴

Even as migration was becoming structurally embedded in the social and economic systems of a core group of migrant-sending and receiving communities,³⁵ however, the United States eliminated most visas for Mexican immigrants. Under pressure from organized labor, Democrats and the Kennedy administration allowed the Bracero Program to expire in 1964. And Congress also revised the *Immigration and Nationality Act* (INA) in 1965, changing the rules for permanent visas, known as green cards. The 1965 amendments liberalized the system overall by eliminating the discriminatory national

32 *Bracero*, in Spanish, refers to a manual laborer.

33 See Calavita, *Inside the State*.

34 Douglas Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Free Trade* (New York: Russell Sage Foundation 2002).

35 That is, demand for migration became entrenched and resistant to being influenced by policy changes; see, for example, Wayne A. Cornelius, *The Role of Immigrant Labor in the U.S. and Japanese Economies* (La Jolla, CA: Center for U.S.-Mexican Studies, 1998).



origins system, but it also imposed numeric limits on Mexico (and other Western Hemisphere states) for the first time.³⁶ The amendments also created a seven-tier preference system for rationing visas within countries, strongly favoring family-based migration and limiting the number of employment-based green cards, with especially restrictive limits for low-skilled employment-based visas. The changes in 1964 and 1965 created a substantial gap between visa supply and demand: while many former *braceros* continued to take advantage of their connections to US labor markets, now they only could enter as unauthorized immigrants.

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The primary US policy response was to increase spending on migration control (mostly Border Patrol personnel), which grew five-fold between 1970 and 1985, and then almost doubled again with passage of the *Immigration Reform and Control Act (IRCA) of 1986*.³⁷ Congress passed additional border enforcement measures in 1990 and 1996 (also creating additional high-skilled employment-based visas in 1990); and in 1994 the Border Patrol initiated a six-year plan to expand fencing, lighting, and personnel along heavily trafficked portions of the border to discourage illegal entries, a strategy of targeted enforcement to achieve “prevention through deterrence.”³⁸ Altogether, appropriations for border enforcement increased 30-fold between 1970 and 2000, from about \$66 million to \$2.2 billion; and the number of Border Patrol agents increased from 1,500 to 9,000 during this period.³⁹ Yet even after IRCA made it illegal to knowingly employ unauthorized workers, migration enforcement at worksites and elsewhere within the United States was sporadic at best; and while an estimated 2.6 million unauthorized immigrants gained legal status under IRCA, the unauthorized population still grew from approximately 3 million immigrants in 1980 to an estimated 8.4 million in 2000.⁴⁰

In contrast with the Bracero period, these changes in the US system after 1970 occurred without any significant US-Mexican dialogue about migration — and for the most part without a Mexican migration policy of any kind. Mexico had petitioned the United States for a new bilateral program during the mid-1960s, but the 1965 amendments reflected a US commitment to nondiscrimination and the

36 Western Hemisphere states were initially subject to a hemisphere-wide limit of 120,000. Individual country limits of 20,000 were imposed in 1976, and Western and Eastern hemisphere states were placed under a global cap of 290,000 visas beginning in 1978, reduced to 270,000 (exclusive of refugees) in 1980.

37 US Immigration and Naturalization Service (INS) spending on migration control increased from \$67 million in 1970 to \$360 million in 1986 and \$594 million in 1990; see US Office of Management and Budget (OMB), *Budget of the United States Government* (Washington, DC: OMB, various years). The *Immigration Reform and Control Act of 1986 (IRCA)* also made it illegal for employers to knowingly employ unauthorized workers (addressing the “pull factor” known to attract most unauthorized immigrants), and included a pair of legalization provisions that ultimately allowed for the legalization of an estimated 2.6 million unauthorized immigrants within the United States. On border enforcement during this period, see Timothy Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992* (Austin: CMAS Books, University of Texas, 1996). On IRCA’s legalization provisions, see Donald M. Kerwin, *More than IRCA: US Legalization Programs and the Current Policy Debate* (Washington, DC: MPI, 2010), www.migrationpolicy.org/pubs/legalization-historical.pdf.

38 Deborah Waller Meyers, *US Border Enforcement: From Horseback to High Tech* (Washington, DC: MPI, 2005), www.migrationpolicy.org/ITFIAF/Insight-7-Meyers.pdf.

39 Dunn, *The Militarization of the U.S.-Mexico Border*; David Dixon and Julia Gelatt, *Immigration Enforcement Spending Since IRCA*, Independent Task Force on Immigration and America’s Future fact sheet no. 10 (Washington, DC: MPI, 2005), www.migrationpolicy.org/ITFIAF/FactSheet_Spending.pdf.

40 On the estimated unauthorized immigrant population during this period, see Jeffrey S. Passel, “Undocumented Immigration,” *Annals of the American Academy of Political and Social Science* 487 (September 1986), 181-200; and Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey*, (Washington, DC: Pew Hispanic Center, 2006), <http://pewhispanic.org/files/reports/61.pdf>.



United States rejected Mexico's appeal for special treatment. By the 1970s, Mexico saw less value in a new guestworker agreement because surging oil prices fueled short-term growth and because failed US migration-control efforts permitted substantial Mexican outflows in any case. Thus, Mexico adopted a "policy of no policy" that allowed the country to reap the economic benefits of emigration without having to acknowledge its development failures or the harsh conditions Mexicans encountered abroad. Conceding that it had no right to interfere in domestic US migration policies also gave Mexico greater standing to insist that the United States respect Mexican sovereignty over its own domestic institutions, including what remained an authoritarian political system.

For these reasons, when the Ford and Carter administrations initiated conversations with Mexico in 1974 and 1977, respectively, about resuming formal guestworker flows and linking a new visa program to a system giving the United States privileged access to Mexican oil, the Echeverría and Lopez Portillo administrations rejected the overtures.⁴¹ With relations strained during the 1980s, the Reagan and de la Madrid administrations allowed a bilateral working group on migration and border issues to founder, and Mexico was a nonfactor in the US immigration policy debate. Indeed, while the US Senate initially included a provision to expand Mexico's visa quota as part of IRCA, Mexico rejected an invitation to testify during congressional hearings in 1986; the language addressing Mexican migration was dropped from the final version of the bill.

D. Beyond the 'Policy of No Policy': 1990s-2001

By the 1990s, harsh US migration-control policies and the deteriorating conditions of Mexican migration to the United States made Mexico's "policy of no policy" increasingly difficult to defend.⁴² With improved international communications, Mexican media focused national attention on deaths at the border as well as on high-profile immigration debates in California in 1994 and in the US Congress in 1996. In Mexico's newly democratic political system, candidates sought financial support from emigrant communities, with presidential candidate Vicente Fox making a campaign promise in 2000 to "govern for 120 million Mexicans" — that is, the 100 million in Mexico and 20 million in the United States.

Mexico's failure to engage with the US immigration debate also stood in sharp contrast with its relatively successful efforts to influence the US debate over the 1994 North American Free Trade Agreement (NAFTA), an effort that led to a dramatic expansion of Mexico's diplomatic and institutional presence in the United States. And as trade ties expanded under NAFTA, overall bilateral relations also improved as Mexico adopted US-backed neoliberal economic policies and began to hold competitive democratic elections. The end of the Cold War-era civil wars in Central America also eliminated an ongoing source of diplomatic tension. Thus, after two decades of systematically avoiding a bilateral migration dialogue with the United States, new thinking emerged that the "policy of no policy" had been a failure, and that Mexico had a right, and even an obligation, to protect its nationals abroad.

Thus, for the first time since the end of the Bracero period, Mexico began to pursue a migration policy of its own. A new federal police agency called Grupo Beta was formed in 1990 to promote improved human-rights conditions along Mexico's northern and southern borders, including by advising migrants on their rights and by rescuing migrants in distress. With financial support from the United States,

41 Carlos F. Rico, "Migration and U.S.-Mexican Relations, 1966-1986" in *Western Hemisphere Immigration and United States Foreign Policy*, ed. Christopher Mitchell (College Park, PA: Pennsylvania State Press, 1992); Fitzgerald, *Inside the Sending State*.

42 In general, this section draws on Jorge I. Domínguez and Rafael Fernández de Castro, *The United States and Mexico: Between Partnership and Conflict* (New York: Routledge, 2002); Marc Rosenblum, "Beyond the Policy of No Policy: Emigration from Mexico and Central America," *Latin American Politics and Society* 4 (1) (2004): 91-125; Alexandra Delano, "From Limited to Active Engagement: Mexico's Emigration Policies from a Foreign Policy Perspective (2000-2006)," *International Migration Review* 43 (4) (2009): 764-814.



Mexico increased enforcement at its own southern border, with apprehensions of Central American transmigrants jumping from 14,000 in 1988 to 160,000 in 1990.⁴³

Mexico also placed migration back on the bilateral agenda, successfully lobbying the Clinton administration to seek changes to what Mexico viewed as the worst features of the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) law, which streamlined immigration enforcement and imposed sanctions on migrants found to be living in the United States without authorization.⁴⁴ Bilateral migration negotiations also received renewed attention through an Immigration Working Group within the US-Mexican Binational Commission, a diplomatic forum established under Presidents Jimmy Carter and Luís Echeverría but dormant during the 1980s. Under Presidents Bill Clinton and Ernesto Zedillo, high-level diplomatic and migration officials from both countries made a sustained investment in the group, an effort also supported in the United States by the congressionally authorized US Commission on Immigration Reform.⁴⁵ The working group successfully committed both sides to recognizing immigration as a bilateral phenomenon requiring bilateral policies and protecting the human rights and orderly repatriations of all migrants. The agreement authorized a binational study of migratory stocks and flows, and the resulting *Binational Study on Migration* in 1997, signed by top academics from both countries, established for the first time a common set of facts about the regional migration system.⁴⁶

Presidents Clinton and Zedillo made a joint declaration in May 1997 outlining four specific programs, including standing procedures between US agents and Mexican consuls during deportation proceedings (Mechanisms of Consultation), standing links between border-city officials (Border Liaison Mechanisms), and a program to target US resources to migrant-sending communities — all Mexican priorities. For the first time, the United States and Mexico agreed to a set of procedures regarding deportation notifications and how removals would occur.

US and Mexican officials appeared poised to build on this momentum after the elections in 2000 of Presidents George W. Bush and Vicente Fox, both bilingual border-state governors with business backgrounds. The two presidents met five times during the first nine months of 2001, culminating with a full binational Cabinet meeting in Washington on September 5, 2001. The presidents used the summit to announce a framework for additional Cabinet-level negotiations aimed at a bilateral immigration deal that emphasized the theme of “shared responsibility” for migration management and outlined a four-part framework for a comprehensive agreement, including legalization for most unauthorized Mexicans in the United States, improved border enforcement, a Mexico-specific temporary worker program, and a public-private partnership to direct development dollars to communities of origin within Mexico. With the US Senate passing a bill the following day to allow some unauthorized Mexican immigrants (and others) to adjust to legal immigrant status, an immigration deal seemed imminent.

E. The Post-9/11 Period

This ambitious agenda — described at the time by Mexican Foreign Minister Jorge Castañeda as “the whole enchilada” — was derailed by the 9/11 terrorist attacks the following week, and US and bilateral migration policies have focused primarily on security issues since then. Congress and the Bush administration passed five separate laws from 2001 to 2006 focused on border enforcement,

43 Dunn, *The Militarization of the U.S.-Mexico Border*.

44 Mexico helped defeat an amendment to exclude the children of unauthorized immigrants from public schools and won concessions on changes to the law’s rules governing the income level that migrants must meet to sponsor family-member migration (so-called “deeming requirements”); see Rosenblum, “Beyond the Policy of No Policy;” James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform* (Boston: Allyn and Bacon, 1999).

45 US Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility—1994 Report to Congress* (Washington, DC: US Commission on Immigration Reform, 1994), www.utexas.edu/lbj/uscir/exesum94.html.

46 Binational Study on Migration, *Binational Study on Migration Between Mexico and the United States* (Mexico City: Secretaría de Relaciones Exteriores, 1997), www.utexas.edu/lbj/uscir/binational/full-report.pdf.



streamlined removal proceedings and limited access to the courts for certain classes of unauthorized immigrants, and improved systems for identifying immigrants and sharing electronic data.⁴⁷ Bilateral migration talks fell off the US agenda, and bilateral relations struggled to recover. With the transfer of migration authority to the newly created Department of Homeland Security (DHS), the Immigration Working Group lost its institutional footing, and no new forum emerged for bilateral migration discussions. Relations were further strained when Mexico, as a temporary member of the UN Security Council, voted against the US invasion of Iraq in 2003.

Thus, bilateral cooperation since 2001 has generally been limited to collaborative approaches to border enforcement. The United States and Mexico signed a 22-point Border Partnership Action Plan in March 2002, emphasizing the use of improved technology and infrastructure and shared data to facilitate legal flows through fast lanes and a frequent traveler program. Presidents Bush and Fox also signed the Partnership for Prosperity agreement the same month, which became the trilateral Security and Prosperity Partnership of North America in 2005, a public-private partnership designed to increase trade and investment and advance common security interests within the NAFTA area.

The most important cooperative program has been the Mérida Initiative, a multiyear, multilateral program announced in October 2007 to combat drug and weapons smuggling, and human trafficking in Mexico, Central America, and the Caribbean. Since 2008, Congress has appropriated \$1.8 billion for the program, with \$1.5 billion for Mexico, though actual spending has lagged somewhat behind the appropriations process. Merida funding has provided equipment and training to military, police, and judicial officials. In 2010, the Obama administration announced plans to expand Mérida's focus to place greater emphasis on improving border infrastructure and promoting economic development and job creation in Mexican cities where drug-trafficking organizations have been most active.

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The Calderón and Obama administrations also have continued a number of cooperative programs at and around the border, to prevent smuggling, track southbound flows of weapons and cash, and strengthen Mexico's counternarcotics efforts. In 2009, DHS announced a new set of Southwest border initiatives focused on preventing violent crime on the US side of the border, supporting Mexico's counternarcotics efforts, and reducing north- and south-bound smuggling. The administration expanded DHS's "Operation Firewall" campaign to reduce bulk cash smuggling and the Department of Justice's "Project Gunrunner" aimed at reducing southbound weapon flows, with both programs including a focus on cooperation with Mexican counterparts. And under a pair of Mexican Supreme Court rulings that eased extradition rules, the Calderón administration extradited to the United States a record number of drug traffickers in 2009 (107, up from 41 in 2005) and almost as many in 2010 (94).⁴⁸

⁴⁷ *The USA PATRIOT Act of 2002* broadened the definition of terrorist activity for the purposes of immigration enforcement and authorized the indefinite detention of non-US citizens. The *Enhanced Border Security and Visa Entry Reform Act (EBSVERA) of 2002* required new biometric systems for tracking entries and exits. The *Homeland Security Act of 2002* restructured existing immigration agencies (among others) into the new Department of Homeland Security (DHS). The *REAL ID Act of 2005* required states to verify individuals' immigration status and imposed additional requirements on federally recognized driver's licenses and also waived environmental protections for fencing along the US-Mexico border. And the *Secure Fence Act of 2006* authorized funding to construct 700 miles of additional fencing at the US-Mexico border, along with additional lighting, sensors, and other infrastructure.

⁴⁸ Clare Ribando Seelke, *Mexico-U.S. Relations: Issues for Congress 7-5700* (Washington, DC: Congressional Research Service, 2011), www.fas.org/sgp/crs/row/RL32724.pdf.



Yet when it comes to broader questions about migration policy, conversations in the United States and Mexico mainly have progressed along separate paths. Within the United States, Presidents Bush and Barack Obama both supported “comprehensive immigration reform” — i.e., enhanced enforcement, legalization, and reforms to the visa system — but neither have returned to the “whole enchilada” idea that included Mexico as part of the immigration reform conversation or that bilateral tools should be employed to manage flows. And after a comprehensive immigration reform bill passed the US Senate (but not the House) in 2006, legislative efforts stalled in 2007 and 2010.⁴⁹

In the absence of congressional action on immigration policy, the most significant developments within the United States have been federal, state, and local enforcement initiatives, both at the border and within the US interior. During its first two years in office, the Obama administration continued immigration enforcement measures initiated under President Bush, leading to a record number of deportations from the United States in 2009 and 2010. The Obama administration’s strategy has emphasized border enforcement — including the deployment in 2010 of 1,200 National Guard troops to the border — and partnerships with state and local law enforcement agencies. But the administration has opposed state and local efforts to pass their own immigration enforcement measures, most notably a pair of Arizona laws that impose new mandates on employers to use the federal E-Verify program to verify workers’ employment eligibility (the 2007 *Legal Arizona Workers Act*), and require law enforcement officers in the state to investigate the immigration status of anyone they suspect of being unauthorized (the 2010 Senate Bill 1070).⁵⁰

In Mexico, while President Fox was politically damaged by the collapse of bilateral migration negotiations after 2001, a broad consensus regarding bilateral migration issues remained in place at the end of his term. In a unanimous vote, the Mexican Congress adopted a joint resolution in 2006 describing six principles that defined Mexico’s views on migration, emphasizing the broad structural causes of migration, calling for better protection of immigrant rights (regardless of legal status), and endorsing the principle of “shared responsibility” with the United States for managing migration.⁵¹ Facing criticism for its own treatment of unauthorized migrants, Mexico also revised its immigration law in 2008 to eliminate provisions making it a felony offense to enter Mexico without proper travel documents or to overstay a visa. Mexico also strengthened laws against human trafficking (2007), passed regulations to improve immigrant detention conditions (2009), and increased penalties against alien smuggling (2010). The Calderón administration drafted a major overhaul of Mexico’s migration law in 2010, passed with some modifications by the Senate in February 2011. If passed by the Chamber of Deputies, as expected, the new law will give unauthorized immigrants broad labor and social rights in Mexico, including through a legalization program, while also expanding federal police authority to enforce immigration law.⁵²

With Mexicans in Mexico and the United States frustrated by the Obama administration’s failure to pass comprehensive immigration reform legislation and by what appears to be an ever-intensifying campaign against immigrants, President Felipe Calderón has been critical of US migration policy. In comments at the White House and before a joint session of the US Congress in 2010, Calderón described Arizona’s SB 1070 as a “threat to civil rights and democracy.” Mexico also filed a friend

49 Marc R. Rosenblum, “Immigration Policy: US-Mexican Relations Confront US Political Realities,” in *Contemporary Cases in U.S. Foreign Policy: From Terrorism to Trade* 4th ed., ed. Ralph Carter (Washington, DC: CQ Press, 2011).

50 Both Arizona laws were the subject of ongoing federal court challenges in at the time of publication.

51 Working Group on Prospects and Design of Platforms for the Construction of a Mexican Migration Policy, “Mexico and the Migration Phenomenon,” (Mexico City: Working Group on Prospects and Design of Platforms for the Construction of a Mexican Migration Policy, 2005), www.sre.gob.mx/eventos/fenomenoengl.htm. The resolution found that: (1) the status quo regime has failed Mexicans and demands an active policy response; (2) the response should include collaboration between the United States and Mexico (“shared responsibility”); (3) emigration pressures will continue as long as Mexicans lack economic opportunities at home; (4) migration policy should protect the human rights of all migrants, regardless of their legal status; (5) border security, including anti-smuggling efforts, must be a top priority; and (6) Mexico should be sensitive to the broader regional context, including systemic pressures compelling Central American transmigration through Mexico.

52 Seelke, *Mexico-U.S. Relations*; Laura V. Gonzalez-Murphy and Rey Koslowski, *Understanding Mexico’s Changing Immigration Laws* (Washington, DC: Woodrow Wilson International Center for Scholars, 2011), <https://wilsoncenter.org/topics/pubs/GONZALEZ%20&%20KOSLOWSKI.pdf>.



of the court brief in one of five federal lawsuits against Arizona's law, claiming that SB 1070 would inevitably result in racial profiling and discrimination against Hispanic Americans. Citing its right under international law and existing US-Mexican treaties to protect the interests of its citizens abroad, the brief argues that "SB 1070 institutes an independent state system of immigration enforcement that not only derails bilateral economic, social and security efforts, but imperils the U.S. federal government's effort at a comprehensive solution for immigration policy. . . . Mexico cannot effectively cooperate or engage in meaningful bilateral relations with the U.S. when states are permitted to interfere with the sovereigns' bilateral efforts."

V. Lessons from the US-Mexico Case

The history of US-Mexican migration relations shows that international cooperation on migration policy may be unusual and offer immense challenges, but it is not impossible. The two countries each pursued unilateral migration policies for most of their history, yet collaborative approaches to managing migration during the early years of the Bracero Program and cooperation on migration enforcement and border management since the 1990s are important counter-examples proving that the obstacles to bilateral migration policy are not insurmountable.

Why has cooperation been so unusual during most of this history, and why do the countries continue to pursue mainly unilateral agendas at this time, especially when it comes to visa policies? In the prewar period, neither country saw any demand for a cooperative approach because both were generally satisfied by free-market outcomes, which provided a reliable, limited stream of seasonal workers to the US Southwest. Where contrary views existed, including differences on migration limits, these demands were partly rooted in distrust of the other side, so migration-control efforts were unilateral. Thus, even where US policy favored Mexican immigrants, as during the World War I guestworker program and the Western Hemisphere exemption from the national origins system, US lawmakers acted alone to waive visa requirements during and after the war, and then to impose tougher visa screening beginning in 1928.

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Likewise, once the Bracero Program served to re-establish a robust migrant labor market in the 1950s, market mechanisms served both countries' interests reasonably well through the 1980s. While *braceros* and unauthorized migrant workers were subject to significant exploitation, powerful interests in both countries opposed new restrictions or worker protections: in the US case to preserve employers' access to cheap labor, and in Mexico's case to preserve a development model that subsidized industrialization through low rural wages.

The circumstances favoring cooperation during World War II and the Korean War and in the 1990s are the exceptions that prove the rule. Genuine cooperation became possible during the wars because markets failed to provide the United States with a reliable and secure supply of needed workers during these periods. The Mexican government was uniquely positioned to address the looming shortages, especially in 1942 when social networks had been disrupted by the Depression and the transportation infrastructure remained limited. US negotiators also viewed the program through a national security lens during both wars. All of these factors gave Mexico substantial leverage during initial Bracero



negotiations and in its early oversight of the program. Thus, the emergence of the “mature” version of the program, which eliminated Mexico’s oversight responsibilities and strongly favored US employers, only became possible after 1954, once labor markets were fully functional on their own (i.e., after Mexico tried and failed to prevent Bracero outflows) and once the Korean War was over.

The 1990s differed from the rest of the post-World War II period in two important ways that encouraged the United States and Mexico to move toward a more collaborative approach to migration policy. First, with the signing of the NAFTA agreement and Mexico’s democratic transition, the two countries forged a closer strategic partnership than at any time in their history. Economic integration resulted in greater demand for migration cooperation (i.e., as a function of increased flows) and placed the issue in a more favorable diplomatic context.

Second, the politics of migration policy also changed. In Mexico, the democratic transition and the exhaustion of the state-led development model made the “policy of no policy” on migration unsustainable. The Zedillo (1988-94) and Salinas (1994-2000) administrations — along with the Fox administration in 2000-06 — recognized that Mexico had a stake in protecting its nationals abroad and promoting a more orderly system; and the issue increasingly worked its way onto Mexico’s domestic political agenda. In the United States, unilateral control efforts reached a peak in the 1990s with the Border Patrol’s “prevention through deterrence” campaign at the US-Mexican border and the passage of IIRIRA and related legislation in 1996, yet illegal immigration continued to grow. These conditions created the space and the demand for a more creative approach to managing migration — though certainly not a consensus about how to do so.

As in the earlier period, cooperation during the 1990s focused on areas of mutual concern and on problems for which collaboration offered concrete advantages over unilateral or market-based approaches. Both countries had a stake in better communication and shared responsibility at and around the border to combat criminality, safeguard human rights, and ensure that deportations occurred in a safe and orderly manner. By 2001, the Bush and Fox administrations were both prepared to build on the success of these programs and to consider a more comprehensive approach to managing the overall migration system.

Finally, why has comprehensive reform failed to return to the bilateral policy agenda in the post-9/11 period? The 2001 terrorist attacks refocused the US debate on security and national identity issues, undermining support for legalization and visa reforms. The debate became even more contentious after 2008 in the context of the US economic downturn and broader polarizing trends in US politics, and as drug-related violence flared in Mexico. Within Mexico, Fox’s perceived acquiescence to unilateral US enforcement efforts also proved politically costly, and since his election in 2006, Calderón has mainly avoided the issue. Thus, by the time the Bush administration refocused its attention on comprehensive reform beginning in 2006, domestic politics in both countries had become an obstacle to a collaborative approach.⁵³

VI. Conclusion

What are the prospects for cooperation at this time? On one hand, the underlying factors that favored cooperation during the 1990s generally remain in place. Despite the intractability of migration policy, the overall US-Mexican relationship has never been closer. With 75 million trucks and passengers entering the United States from Mexico in 2009, \$250 billion in legal trade between the countries, and about 30 million Hispanics of Mexican origin living in the United States, the two countries are simply too intertwined to leave any issue of mutual concern off the bilateral agenda. Realistically, neither

⁵³ Rosenblum, *US Immigration Policy Since 9/11*.



country can hope to accomplish its core goals at the border — controlling crime and violence, countering terrorist threats, preventing illegal entries, facilitating legal travel and cross-border trade — without close coordination and cooperation with the other. Broader questions about US immigration policy, including how to manage employment-based migration and what to do about the 11 million unauthorized immigrants already in the United States, are also easier to answer if policymakers draw from a cooperative toolkit. The United States and Mexico have a great deal to gain long-term by working together to manage migration policy as a tool for enhancing the region’s human capital, an engine for regional economic growth and increased global competitiveness.

On the other hand, the obstacles to cooperation that emerged after the 9/11 attacks generally remain in place, and in some respects are even more daunting than before. The prospects for a large-scale legalization or a new temporary worker program — core elements of the “whole enchilada” framework — are more doubtful in light of the weak US economy and Republican gains in the 2010 congressional elections. And while US and Mexican officials see their campaign against Mexican drug-trafficking organizations as an important example of bilateral cooperation, continued high levels of drug-related violence, concentrated in Mexican border cities and in important migrant-sending states such as Michoacán, threaten to overwhelm other aspects of the bilateral relationship. The drug war in Mexico undermines US trust in Mexico’s ability to be a reliable partner for migration cooperation, and causes many Mexicans to question whether the United States is willing to take on the costs of reform at home, including by reducing demand for drugs and the supply of weapons fueling Mexican violence.

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With these constraints in mind, episodic cooperation during World War II and the 1990s suggests three principles for successful migration cooperation. First, cooperative institutions should respond to market failures by promoting policy outcomes that benefit both countries and the recognition that neither the market nor the unilateral policies of either country can bring this about on their own. Cooperation is not an end in itself, but may be a means to accomplish concrete policy goals that depend on coordination or joint enforcement. Second, cooperative policy approaches may become easier when the United States and Mexico find linkages across related issue areas. During the early stages of the Bracero Program, for example, Mexico made concessions on visa numbers in exchange for a greater say in how guestworker visas were enforced; collaboration at this time and during the 1990s was also based on the recognition that the United States and Mexico have broader common interests, and fundamentally linked fates. Third, building collaborative mechanisms may also require an incremental approach. In the 1990s, border-level cooperation on enforcement and human rights emerged out of long-term investments in bilateral forums for discussing migration issues and became stepping stones for building mutual trust through which a comprehensive immigration reform framework began to emerge.

These principles suggest four possible areas in which policymakers may find reasons to look for further bilateral approaches to managing the US-Mexico migration system in the future:

- **Border management.** The border is already the site of the most extensive US-Mexican collaboration on migration processing and law enforcement, but also a place with obvious opportunities for greater efficiency. Both countries have an interest in faster legal flows through ports of entry and should continue to expand processing infrastructure, including by pushing screening away from crowded border-city centers. On the enforcement side, existing joint training and information-sharing programs should be expanded, and enforcement agencies should harmonize their force structures.



- **Regulating labor brokers.** Labor brokers are private agents who match workers and employers and provide many of the services creating efficient labor markets in North America, as in many other migration systems. Both countries have strong interests in preserving efficient worker recruitment, but many brokers demand high fees or otherwise exploit vulnerable immigrants, and some provide poor service to employers by delivering unauthorized workers or workers who don't have promised skills. Better regulation of labor brokers to increase transparency and accountability would benefit stakeholders throughout the migration system, but neither state can effectively regulate this industry on its own.
- **Credentialing and migrant selection criteria.** The US-Mexico labor market makes abundant Mexican workers available to US employers, but employers often do not have reliable information about workers' skills or credentials, especially for semi-skilled and craft workers who may not have advanced degrees, such as electricians, plumbers, and engineers. Poor information about workers' credentials undermines US efforts (on the part of private employers as well as lawmakers) to limit recruitment to certain categories of workers, and also means that skilled Mexican workers may be forced to offer their services at a steep discount. Here, too, the bilateral labor market would operate more efficiently with bilateral institutions to fill this gap so that US employers have credible information about migrants' skills and backgrounds.
- **Job creation in communities of origin (co-development).** The United States and Mexico have a common interest in Mexico's robust economic development — development that benefits US exporters and that may create realistic alternatives to emigration for Mexican workers. While Mexico must take the lead in creating a favorable climate for growth and job creation, the United States should consider the relationship between economic development and migration in its foreign-assistance planning.

There is no shortage of explanations for the history of unilateralism when it comes to migration policy, but neither should policymakers rule out collaborative approaches in which migration can best be managed cooperatively. Indeed, on issues such as border management, regulation of labor brokers, immigrant credentials, and job creation in communities of origin, the United States and Mexico have clear shared interests — and obvious opportunities for efficiency gains through a bilateral approach. Thus, while the complexity of the migration debate and challenging contemporary context may make a high-profile comprehensive immigration reform proposal — or “whole enchilada” approach — unrealistic at this time, policymakers should consider incremental steps in each of these areas to improve migration outcomes.



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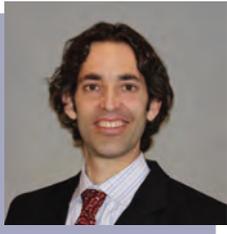
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