

A Paradox of the 1990s

THE NEW U.S. IMMIGRATION LAW

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After several months of negative responses from different quarters in Mexico about the Illegal Immigration Reform and Responsibility Act of 1996 (IIRIRA), effective in April 1997, and attempts to decertify Mexico for its supposed lack of cooperation in the fight against drug trafficking, President Clinton made an official visit to Mexico City May 6 and 7.

During the visit—which presented the Mexican government with certain challenges given the difficult political situation—the migration of Mexican nationals to the United States was widely discussed. In the “Joint Statement on Migration,” both presidents commit their governments to increased efforts and dialogue to strengthen mechanisms and fora for consultation and cooperation on migration and consular protection to ensure respect for migrants’ rights while enforcing the new law. They mainly emphasized repatriation procedures, trafficking in migrants and developing a joint comprehensive approach to migration through specific and cooperative studies that will contribute to a bilateral understanding of the issue. They also proposed exploring new approaches to the design of development projects for a better managed border.¹

Undoubtedly the attitude of both the U.S. public and government became more hard-nosed because of the 1990-1994 economic recession and the Republican Party majority in the House of Representatives and the Senate. The anti-immigrant climate was clear in a new verbal offensive against immigrants in general and Mexican undocumented immigrants in particular. The media in both Mexico and the U.S. reproduced statements of U.S. political players, from inside and outside government, who continued to justify and sometimes even reinforce a general sentiment against the growing wave of undocumented workers.

In the 1990s, immigrants have been dubbed “a problem,” justified with arguments frequently used in the past. Unions criticize them for taking jobs away from U.S. workers; xenophobes, for not learning English and bringing with them foreign customs considered unacceptable to U.S. society. However, the anti-immigration arguments specific to the 1990s came mainly out of the fiscal crisis that many local and state governments faced, like the one in California. This is why emphasis was put on the cost of educating undocumented children in public schools and providing free health services to the poor, especially undocumented immigrants.²

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¹ William Jefferson Clinton and Ernesto Zedillo Ponce de León, “Joint Statement on Migration Adopted by the President of the United States and the President of Mexico,” May 6, 1997, mimeograph.

² For more information, see Manuel García y Griego and Mónica Vereá, “La crisis económica y fiscal de California y la nueva ofensiva verbal en contra de los indocumentados,” in Rosa Cusminsky Mogilner (comp.), *California: Problemas económicos, políticos y sociales*, CISAN-UNAM, Mexico City, 1995, pp.25-151.



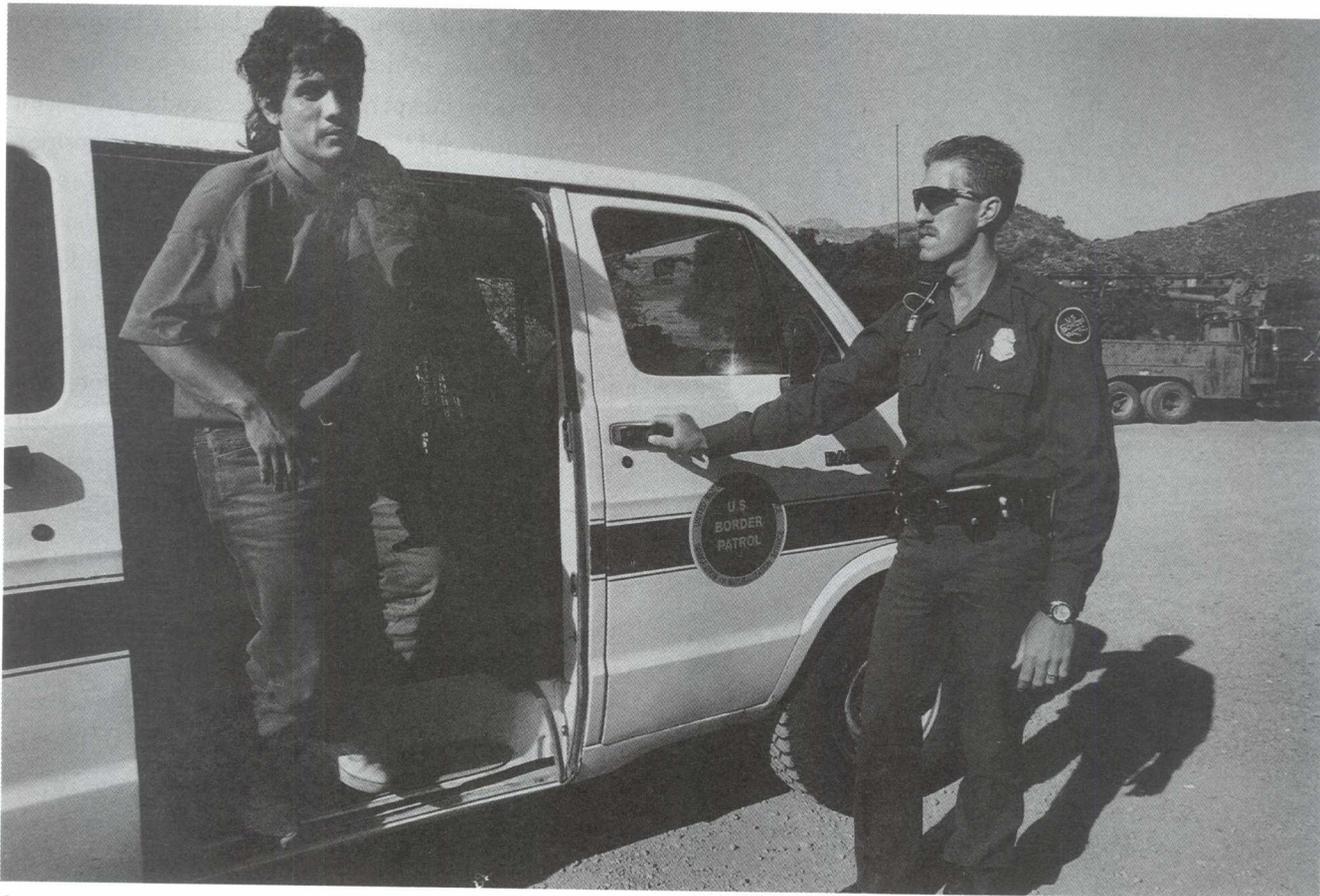
The dream of a better life in the promised land is becoming more and more remote given the trends that gave rise to proposition 187 and new immigration legislation.

Photos by Elsa Medina

This was fertile ground for the birth of Proposition 187 in California, which would prohibit providing free medical services, except in emergencies, and schooling for undocumented children. The promoters of Proposition 187 had the anti-immigrant climate on their side as well as the decided support of Republican gubernatorial candidate Pete Wilson, who was reelected by a landslide.

Although its enforcement is still suspended,³ the approval of Proposition 187, upped the volume of the political debate and radically fed the possibility of promoting anti-immigrant bills in other states and in Congress itself. For example, two initiatives were presented in Florida and Arizona with names and contents similar to those of Proposition 187. In addition, its approval changed the terms of the debate about immigration in Congress, although it should be underlined that California Representative Gallegly's attempt to push through legislation to ban access to public schools for undocumented immigrants did not attract enough support to become law. The climate generated by the passage of Proposition 187 in California, combined with two other political factors, the advent of the Republican majority in Congress and the 1996 presidential campaign, had two important results: legally denying immigrants federal services and creating fertile ground for promoting more radical forms of immigration control. Even though Senator Phil Gramm and Representative Lamar Smith, current president of the House Sub-committee on Immigration and Refugees, lost their bids for the Republican Party 1996 presidential nomination, they were successful in getting anti-immigration legislation passed in 1996, which President Clinton (then also the Democratic candidate for reelection) felt forced to sign. A good number of their proposals became law in three bills passed and signed between August and September 1996: the Personal Responsibility and Work Opportunity Act (PRWORA), the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal

³ In late 1994, federal Judge Mariana Pfaelzer indefinitely froze those sections of Proposition 187 which impede undocumented workers' access to education and health services, and called upon users of these services to take into account that the law is not in force. "Darán a conocer públicamente en California que la 187 no procede, un juez federal dio la orden," (Mexico City) *El Financiero*, 14 January 1995, p. 20.



Recent Border Patrol operations are aimed at making illegal immigrants' crossings as difficult as possible.

Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). We should emphasize that both Gram and Smith had already proposed one of the IIRIRA's most important measures (doubling the number of Border Patrol agents every year until the year 2000) during the 1996 presidential primaries.⁴

Despite Lamar Smith's proposing the most audacious initiatives, only a few became law: a) building a triple metal fence, illuminated in urban areas, along the entire border with Mexico (approved); b) uniting Immigration and Naturalization Service (INS) and Customs Service efforts to improve control of undocumented migration and drug traffick (amended); c) fining anyone arrested for crossing the border without documents up to U.S.\$250 (amended); d) confiscating funds or property of people arrested for trying to enter the United States without documents more than once in a

year (not approved); e) trying and sentencing to 10 to 15 years in prison anyone attempting to enter the United States without documents for the third time (not approved); f) demanding undocumented foreigners repay all benefits they have received in the way of public services (not approved); g) eliminating the right to citizenship for the children of undocumented workers born in the United States (not approved); h) giving state governments the option of denying access to public schools to undocumented migrant children (not approved); i) employing fenced military bases as detention centers for illegal foreigner immigrants (approved).

With regard to legal immigration, Smith proposed significantly reducing yearly quotas, from the 1994 level of 804,416 to 535,000. Of these, 330,000 would be immediate relatives, 135,000 skilled workers and 70,000 refugees (not approved).⁵

⁴ "Clinton Will Seek Spending to Curb Aliens, Aides Say," *New York Times*, 22 January 1995.

⁵ "House GOP Moves to Cut Immigration," *New York Times*, 22 June 1995, p. A10.

Despite Border Patrol operations having reduced the number of crossings in areas with heavy surveillance, undocumented migrants have changed where they cross to more remote areas and increased the use of forged documents.

President Clinton has been energetic, although not always clear, about migration. His aim is to find a middle ground vis-à-vis the extremes of the U.S. political spectrum on the question and keep up his profile in the debate in order not to be marginalized. Despite his recognition of legal immigrants' important contribution to U.S. society, his most recent statements show intolerance for undocumented immigration, although simultaneously recognizing the need to limit the measures against it. Clinton, then, proposes a series of immigration control initiatives that he himself terms the "most aggressive and broadest [plan] in the fight against illegal immigration ever proposed by any administration."⁶ This plan was made public shortly after Attorney General Janet Reno announced that an additional U.S.\$369 million would be apportioned to the Border Patrol to increase its roster to 7,000 agents.⁷ Clinton proposed tolls of U.S.\$3.00 per vehicle and U.S.\$1.50 per pedestrian for crossing the border to increase funding for southern border security. After getting the publicity it wanted, the administration took a step back on this controversial issue, which would have been a clear violation of the North American Free Trade Agreement. It suggested instead a plan for voluntary tolls to be collected by the states to improve border services.⁸

⁶ With the exception of a toll for crossing the border, all the measures in this plan were later approved. The original proposals included the following: a) increasing the personnel to hunt down immigrants; b) extending and improving the verification system for work permits; c) cancelling all public services for undocumented immigrants, except education and medical attention; and d) levying a toll for crossing the border. See "Proponer E.U. ampliar barreras fronterizas," (Mexico City) *Reforma*, 7 February 1995.

⁷ At the end of 1994, the Border Patrol had 4,367 agents. See "Clinton Will Seek Spending to Curb Aliens, Aides Say," *New York Times*, 22 January 1995.

⁸ "Proponer EU ampliar barreras fronterizas," (Mexico City) *Reforma*, 7 February 1995.

President Clinton's position against undocumented immigration should not be interpreted as a simple, unconsidered anti-immigrant stance. He emphatically opposed Proposition 187 on the basis of a 1982 Supreme Court decision giving undocumented children the right to access to public schools.⁹ At the same time, his proposal of cutting public services to undocumented immigrants did not include access to public schools or health care. In addition, he proposed apportioning U.S.\$250 million to the states that shouldered health care spending for undocumented immigrants.¹⁰

The Clinton administration has emphasized stepping up surveillance along its border with Mexico. Previously, Border Patrol efforts were directed at expelling recent entries and maximizing the number of detentions near the border and expulsions. Since 1993, however, the Border Patrol has carried out the well publicized "Blockade" operation in El Paso, "Guardian" in San Diego and "Safe-guard" in Arizona, aimed mainly at making it as difficult as possible for undocumented migrants to enter the general localities where the majority of crossings occur. Despite the fact that these operations have reduced the number of crossings in these closely watched areas, undocumented migrants have changed the site of their crossings to more remote and dangerous places like, for example, the mountainous area east of Tijuana, and have increased their use of forged documents at ports of entry.

⁹ The decision in the case of *Pylar vs. Doe* was the basis for the states making public education available to all children, from kindergarten through high school, regardless of their migratory status.

¹⁰ Holly Idelson, "Proposals Would Crack Down on Illegals and Tighten Rules for Legal Immigrants," *Congressional Quarterly*, vol. 53, no. 15, Washington, D.C., 15 April 1995, p. 1068.

Clinton's attempts to contain the anti-immigrant wave were only slightly successful in Congress. The Republicans have insisted on seeking ways to significantly cut spending to balance the budget in compliance with their party's overall platform. In August 1996, then, the Personal Responsibility and Work Opportunity Act (better known as the Welfare Act) passed and was signed into law by Clinton. This law eliminates the right of legal immigrants to certain free federal services. The measure mainly affects the aged, cancelling their access to social assistance and health services, and those in low income brackets (mainly agricultural laborers) who sometimes depend on food stamps to keep going, particularly when they are out of work. The budget plan Clinton negotiated with the Republican congressional caucus in April 1997 provides for restoring almost half of the free federal services for legal immigrants that were cut.

The president also signed the new immigration law (IIRIRA) in September 1996, which signalled a radical change in U.S. immigration law, particularly with regard to undocumented migrants' rights.¹¹ As can be appreciated in the summary we have prepared (see box), the law is like a regulation in its minute detail and because it has many small clauses with far-reaching consequences. Despite the fact that the IIRIRA is not as extremist as Lamar Smith's proposals, many of which might have been overturned as unconstitutional, it is tougher than the 1986 Immigration Reform and Control Act (IRCA) in that it is harder on undocumented immigrants.¹²

In the first place, the IIRIRA is an attempt to considerably increase the number of police officers for immigration control. It authorizes an annual 1,000 agent increase for five years for the Border Patrol, effectively doubling its personnel on the southern U.S. border, bringing the number to 10,000 agents by the year 2001.¹³ It also provides for

an annual increase of 300 workers for the Border Patrol support staff for five years, plus more police officers to investigate employers who hire undocumented workers and immigrants with forged papers. It approves the hiring of 300 police officers for three years to investigate the cases of foreigners who legally enter the country, mainly as tourists, and who stay after their visas have expired. Six hundred new posts have been created to review requests for political asylum, and the number of judges and state's attorneys for dealing with immigration cases has increased. The IIRIRA proposes U.S.\$150 million in additional spending to finance the expulsion of undocumented immigrants. To do this, it considers it necessary to augment INS detention cell space to a 9,000 prisoner capacity. It assigns U.S.\$12 million for building a 22 kilometer triple fence along the border with Tijuana that the INS itself publicly said was unnecessary. In conclusion, then, Congress insisted on a considerable increase in public funding for controlling undocumented immigration, emphasizing surveillance of the Mexican border. These new measures underline the U.S. Congress' policing and criminal focus on the question of undocumented immigrants.

The IIRIRA also initiates a series of important changes for immigration control within U.S. borders, the effects of which will not be immediately felt. To simplify compliance with the law penalizing employers, the number of documents that a worker must present to prove his or her U.S. citizenship or permission to work was reduced. Simultaneously, a process of harmonizing birth certificate forms issued by the different states began and the social security system authorities are mandated to design a card that would be difficult to forge. Three pilot programs have been set up to better control the hiring of citizens and authorized foreigners, thereby preventing the employment of undocumented workers. New procedures for more accurately verifying the exit of non-immigrants (mainly tourists)

stages: "authorization" and "appropriations." During the authorization stage, jobs are created and spending ceilings set for each of the items. In the second phase, annual federal spending is decided and amounts below or up to the pre-established ceilings are fixed. The amounts authorized in the IIRIRA will be discussed each year from 1997 to 2001 during the debate on the annual budget. This means that while INS spending for immigration control may well increase sharply, it will not necessarily reach the maximum amount authorized by the IIRIRA.

¹¹ "Immigration Overhaul," *Migration News*, vol. 3-96/MN, University of California at Davis, California, October 1996.

¹² Our analysis of the IIRIRA is based on the text itself (Pub. L. 104-208, 110 Stat. 3009), the summary prepared by the Commission on Immigration Reform ("Section-by-section Analysis of the Illegal Immigration [Reform] and Immigrant Responsibility Act of 1996," unpublished text, 50 pp., 17 October 1996) and different issues of *Interpreter Releases* from September 1996 to January 1997.

¹³ The approval of the budget in the U.S. Congress goes through two major



Proposition 187, a symbol of racism and discrimination.

from the country have been set up. The law increases sentences for users of forged documents and people falsely claiming U.S. citizenship or aiding and abetting the traffick in undocumented immigrants. Lastly, it makes fleeing an immigration check a crime. While each of these measures may be limited when taken alone, when appraised all together, they represent a appreciable expression of political will and a considerable effort to tie up loose ends with regard to domestic immigration control.

The IIRIRA abolished the deportation and expulsion hearings that had survived a number of years, and in doing so, eliminated many of the rights of undocumented immigrants slated for deportation. The new procedure, called "removal," and another called "expeditious removal" allows for anyone who applies at a port of entry without documents or with forged documents to be removed without

any hearing at all. In addition, it eliminates the courts' authority to legally review any removal order.

For undocumented Mexican migrants who live with relatives and seek entry as immigrants, the IIRIRA introduced two important changes that affect them negatively. First, they run the risk of indefinitely postponing the acquisition of legal status if they do not leave the United States within 180 days. Those who remain over 180 days but under a year without documents and leave the country before a removal process begins will not be allowed to file for legal residency for the following three years. Those who stay over a year will not be allowed to file for 10 years. If they stay for an "aggregate" period of more than a year,¹⁴

¹⁴ "Aggregate period" here means a sum of stays: when the person stays for a total of more than one year, even if at different times; for example, a first stay of eight months and a second stay of six. [Editor's Note.]

they would be permanently classified as inadmissible, although after remaining outside the United States for 10 years, they would be eligible to file for an exception with the Attorney General's Office. Second, one of the IIRIRA's requirements for becoming a legal immigrant is having a sponsor or co-sponsor who can prove a minimum family income equivalent to 125 percent of the official poverty level cut-off point. Many legal immigrants earn approximately the minimum wage, particularly in families with many children, and therefore would not be able to comply with this prerequisite.

Other changes made in the IIRIRA would also have an important impact. For example, if someone in the midst of a removal process agrees to leave the country before the process has finished but then delays his or her exit, he or she may be fined U.S.\$1,000 to \$5,000 and, under certain circumstances, U.S.\$500 a day. The law also requires closer collaboration between the INS and local and state police. In addition, it recommends that the executive branch negotiate treaties with other countries which permit exchange of prisoners even when the prisoner refuses to serve his/her sentence in his/her country of origin; it denies social security benefits (in the U.S. case, this means pensions) to undocumented workers, even though social security deductions continue to appear on their paychecks.

There is no doubt that the approval and recent implementation of IIRIRA affects Mexico's interests, limits the possibilities of continuing rapprochement of the two nations and causes tension in bilateral relations. Despite the fact that it is a sovereign decision of the United States, it has caused irritation and wounded feelings and exacerbated anti-U.S. sentiments among Mexicans. The Mexican press and public have interpreted many of the events of the 1990s as aggression against their countrymen/women in the United States. Anti-immigrant operations aimed at Mexicans in the border areas of El Paso, Arizona, and California and the approval of Proposition 187, for example, generated a heated debate in Mexico, in addition to a series of protests and proposals from different sectors of society.

It should be noted that the IIRIRA was passed and signed relatively quickly. The congressional debate did not take as long as the IRCA debate in the 1980s. The dispatch with which it was approved showed the electoral intentions of

both the Republicans in Congress and Clinton in his re-election bid. That is even clearer if we take into account that while the IIRIRA was being debated in Congress, a binational study on migratory questions was being carried out that would be the basis not only for having a real, impartial, idea of the phenomenon in both countries, but also for making proposals and setting up mechanisms for collaboration in migration. That binational study is about to be finished and will not include any in depth analysis of the repercussions of the new law. Perhaps the Mexican government should have continued the lobbying efforts it so actively and successfully carried out in the 1990s for the approval of NAFTA by the U.S. Congress in order to, if not stop, at least change some of the measures that severely injure our countrymen/women who live and work with or without documents in the United States.

Given such a negative panorama, it should be pointed out that since 1986, and particularly since 1993, bilateral U.S.-Mexican consultation on migratory matters has increased in frequency and depth. This is a paradox: on the one hand, the new offensives create tension and, on the other, the new closeness between both governments propitiates more frequent consultation, new attempts at cooperation and joint activities that imply lower costs.¹⁵ The many meetings to seek new ways of dealing with the issue, the fact that Mexican instructors have been sent to the Border Patrol academy, the setting up of a group of academics to do the bilateral migratory study and the different acts of cooperation along the border, while modest, are still all activities that show greater bilateral activity and a genuine effort to establish closer collaboration. It would seem, then, that U.S.-Mexican relations have come quite a way from the barely courteous dialogue of the 1970s to a new spirit of cooperation in the 1990s. If this very negative panorama for migration had come to the fore a few years ago, we would have been justified in expecting a significant cooling in bilateral relations. ❧

¹⁵ For more information see Manuel García y Griego and Mónica Vereá, "Colaboración sin concordancia: la migración en la nueva agenda bilateral," in Rafael Fernández de Castro, Mónica Vereá and Sidney Weintraub, *La nueva agenda de la relación bilateral*, FCE-CISAN-ITAM, at press.