Immigration Consensus Needed for Guest Worker-Amnesty Bills

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Fred Greaves/Reuters

Minutemen defending their promised land.

Forging a consensus of opinion and viewpoints around the issue of immigration has always been very polemical and something that has divided both the U.S. Congress and the leaders of different sectors of U.S. society. It has been even more complex to negotiate a migratory accord like the one proposed at the beginning of the Bush and Fox administrations, a proposal frozen after the 2001 terrorist attacks because anti-terrorist paranoia was added to the already prevalent xenophobic, anti-immigrant feelings. For three years after the terrorist attacks, policy makers resisted openly discussing immigration, concentrating on how to manage their own national security.[1] Despite the fact that in Mexico, people thought that the migratory accord already enjoyed the consensus of the negotiating parties, the reality is that it still had a long, winding, conflictive way to go in the U.S. Congress and among different sectors of U.S. society, not to mention needing the commitment of President Bush himself.[2]

Since January 2003 after the resignation of Foreign Affairs Minister Jorge Castañeda, the architect of "the Whole Enchilada," his successor Luis Ernesto Derbez distanced himself from the migratory issue, considering that it had too high a political cost for our complex bilateral relations. Minister of the Interior Santiago Creel took advantage of the opportunity to fill the vacuum, taking a leadership role around the issue for the last two and a half years. Creel consolidated bilateral accords about national security for the control of our shared border, the Americans' main objective.

For better or worse, over the last few months, migration has again been highly debated among leaders of public opinion and U.S. policy makers. In general, the U.S. public is alarmed by continual media attention to growing waves of undocumented migrants, most of them from Mexico's border areas, arriving every year in their country. For this reason, they think reforms to their immigration system are needed.

Today, Mexico is the most important source of permanent and temporary immigrants to the United States, both holders of different kinds of visas and undocumented migrants. About 27 million people, or 65 percent of the Latino community, are of Mexican origin. Of these, 10.6 million were born in Mexico, the majority undocumented. Approximately 400,000 Mexicans remain in the United States every year, a figure that grows with the 110,000 temporary workers who receive work visas for different kinds of jobs.[3]

That is, despite restrictive measures taken to reinforce the southern border and keep migrants out, at the end of the twentieth century and in the first years of the twenty-first century, both documented and undocumented Mexicans have continued to migrate to the United States. And, they play a very important role in the U.S. labor market and in the development of its economy.

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ANTI-IMMIGRANT MEASURES

A year and half after the U.S. president announced his electorally oriented "Bush Plan," in which he set forth his idea for temporary work visas, he has remained cautiously absent from the immigration debate. This silence can be interpreted as an attempt to achieve a consensus of Republicans and Democrats about the importance of promoting reforms to the U.S. migratory system. To show his commitment to the fight against terrorism and his policy of strengthening national security, President Bush

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has signed several measures that affect bilateral migratory relations, some of which are enumerated below.

The Real Identification Act (Real ID) obligates state governments to verify drivers' license applicants' migratory status,[4] despite this having been rejected by some members of the Supreme Court.[5] Republican Congressman James Sensebrener, the main promotor of this measure against undocumented migrants, has been the foremost opponent to recognizing the validity of the Mexican Consular Registry.[6]

The Real ID is a reaction to the more than 1.5 million consular registrations that have been issued in the almost 50 Mexican consulates in the United States. Although the issuance of this ID is not new, the Fox administration, after the failed migratory accord, decided to more aggressively promote the document to protect undocumented Mexicans in the United States. The registrations have been used to get drivers' licenses, open bank accounts, send money to family members and board airplanes. Their validity has been questioned by some state congresses like Arizona's and by U.S. anti-immigrant groups, using the argument that it is not a secure document. However, some sympathizers and pro-immigrant associations, financial institutions like the Bank of America, Citibank and Wells Fargo Bank, among others, have supported the registration as a secure document for transferring funds. And opening bank accounts has been responsible for decreasing the cost of sending remittances home, thus benefitting both immigrants and their families.

The leading role Arizona has played in the war against undocumented migrants should be mentioned, since it became the first state to require proof of citizenship when registering to vote and approved a measure requiring state employees to report illegal immigrants to federal authorities if they apply for health benefits.

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Also, with Bush's support, the state authorized project SB 1306 so 500 Border Patrol agents could cooperate to stop illegal immigration as part of the Arizona Border Control Initiative, ABC. But the most controversial action has been the Minuteman Project, which allows retired volunteers with guns, mainly land owners, who say they are tired of illegal immigrants crossing their property, to "hunt illegals." That is, Arizona is a model for other states like California starting up "look alike" operations which may begin in September this year.[7] These initiatives demonstrate growing intolerance with severe racist overtones, deepening the division and affecting bilateral relations.

BUSH'S PLANS VS. MCCAIN-KENNEDY AND CORNYN-KYL

In early 2004, President Bush thought that his plan would solve the problem of undocumented immigration and smuggling of persons. In addition to a reasonable annual increase in visas for legal immigrants, his plan put forward the possibility of creating a Guest Worker Program, offering people renewable 3-year visas. Since Bush is convinced that immigrants are "temporary," he proposes that these employees would be credited with retirement benefits in their nations of origin, as well as the creation of savings accounts they could access on returning home.

President Bush did not come up with this plan suddenly, but based it on several bills that the U.S. Congress was already discussing, mainly about guest worker programs and bills to regularize and/or legalize undocumented migrants, among other measures, that had not won Republican support but did have the Democrats' blessings for their eventual passage.

Bush did not send his plan to Congress because he feared it would be rejected by his own

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party members, but at least he sent a signal about the importance of reviving discussion about the issue. The White House is said to have been working with Republican Senators John Cornyn from Texas and Jon Kyl from Arizona to reach a consensus between their bill and the McCain-Kennedy bill.[8]

On May 26, Senators Cornyn and Kyl presented their bill called the Comprehensive Enforcement and Immigration Reform Act of 2005, the first part of a migratory plan that would establish many balanced measures to control the border and create a limited temporary workers program.[9] It would create a nationwide electronic system to verify the immigration status of prospective employees; increase the penalties for hiring or continuing to employ illegal aliens (since they are aware that the government has done almost nothing to enforce the law banning their employment); hire 10,000 new agents and 1,000 more inspectors at ports of entry between 2006 and 2010 (to add to the 11,000 already existing agents and inspectors); and allot U.S.$500 million for equipment acquisition on the northern border.[10] This bill also includes a guest worker program that would require foreign workers to eventually return to their countries of origin rather than offering them a path to citizenship. As Cornyn said in an interview, "It would be a temporary worker program based on the principle of work and return rather than work and stay."

The Cornyn-Kyl plan will try to compete with a proposal presented two weeks before by a bi-partisan team made up of Senators John McCain (R-Arizona) and Edward Kennedy (D-Massachusetts) with backing from Republican Congressmen Jim Kolbe and Jeff Flake of Arizona and Democrat Luis Gutiérrez from Illinois. The rival bill, the Secure America and Orderly Immigration Act, is less tough on border enforcement and more generous with old and new immigrants.[11] It has been backed by the U.S. Chamber of Commerce and numerous other groups and would allow some of the estimated 10 to 12 million undocumented immigrants in the U.S. to obtain legal work permits and eventual citizenship. Despite not offering an amnesty —"There is no free ride for illegals in their bill"— after a six-year period of indenture, payment of some fines, criminal and security background checks and an English and civics test, they and their families could get green cards. This is a prospective amnesty, as opposed to the 1986 Act, which was a retrospective one.[12]

The McCain-Kennedy bill takes on board some of President Bush's proposals. That is, at the same time that it puts forward rigorous border security and the fight against smuggling of people, it proposes a guest worker program that would cover about 400,000 people a year, who would have to work for a 4-year period of indenture before they could get a green card. It would establish a new visa, the H-5A, for low-skilled, nonagricultural foreign workers. To accommodate them, legal immigration quotas would be increased by half a million a year. Those who have been working for more than five years, have dutifully paid their taxes and have no criminal record could be candidates for requesting the regularization of their migratory status, an option Bush did not offer in his plan. They propose that guest workers not on a path toward citizenship would return home after their work visas expire.

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The McCain-Kennedy bill has similarities to the failed 2001 migratory accord, which contains measures to legalize millions of undocumented migrants at the same time that it creates a temporary worker plan. In contrast with the Cornyn-Kyl bill, it establishes mechanisms to accelerate family reunification for those who aspire to regularization and, to that end, includes simplifying the process of getting visas for the spouses and children of immigrants. In addition, it proposes a national strategy to strengthen border security particularly with Mexico, and offers the Mexican government incentives for protecting its southern border with Central America. It also deems it necessary to earmark new resources for surveillance of enforcing the law in the work place, that is, to penalize employers for hiring undocumented migrants, something that very little has been done about since its being voted into law in 1986.

Even if one of these bills or a combination of them got through the Senate, it would still face important stumbling blocks in the House of Representatives where there are many anti-immigration members, mostly Republicans. President Bush has to work very hard to achieve a consensus between these two bills and come to a mid-point on a highly divisive issue. It is possible that Bush will propose immigration changes that would first tighten up border security, like Real ID, before looking to possible legislative changes that would inaugurate a path to some kind of legalization for undocumented migrants already in the country.

This opens up a window of opportunity for Mexico to lobby in both houses of Congress and in the Mexican-American community in support of the McCain-Kennedy bill, which more closely reflects our interests. The Mexican government and Congress should foster an open reflection or national debate about the issue of migration in general and about the bills currently before the U.S. Congress in particular. It will be necessary to prepare a formal proposal supported by different sectors of society, perhaps a quasi-NAFTA-Plus proposal, 11 years after NAFTA came into effect, that would deconstruct the migratory accord proposed four years ago and put forward a policy of small advances over a period of 10 years: it is not the same to negotiate more different kinds of visas for Mexicans as it is to press for an amnesty. The position of the Mexican government is still not clear about whether we want to fully integrate to the North American region and what price we are willing to pay politically and economically.

The document "Construcción de una Comunidad de América del Norte (The Construction of a North American Community) can serve as the basis for a discussion of interests and the direction to be taken for the eventual creation of an economic and security community in the region.[13] This document was presented at the trilateral meeting in Texas in March 2005 where the three countries signed the Alliance for Security and Prosperity of North America.

The task force that wrote the document considered that a common security parameter must be established by 2010, as well as a North American pass and a unified North American Action Plan, which would require the harmonization of migratory and security systems. In the chapter on increasing labor mobility in North America, it proposes expanding migra-

tory worker programs and implementing the Social Security Totalization Program negotiated between Mexico and the U.S. For that, the authors considered it necessary to create a "North American Preference," establishing the labor mobility rules necessary to work elsewhere in the region. This system should be broader and simpler than the current system of NAFTA visas. One forgotten issue that they do propose is the creation of a North American Education Program, which I think is indispensable and urgent for the region.[14]

I would add, among many other measures, the need to establish in the short term an *ad hoc* training program for persons with non-professional experience, through the TN visas created under NAFTA. These visas are available for professionals in unlimited numbers and have been highly under-utilized by Mexicans for different reasons. Bringing together education with training programs for specific jobs and broadening the number of possibilities beyond what NAFTA establishes is a goal that we should study and propose for the benefit of Mexicans in particular and the region in general. **VM**

Notes

[1] The author wishes to thank Erika C. Veloz Gutiérrez for her efficient technical support.

[2] The migratory accord included border security, the promotion of economic development in migrant-sending regions, more visas, regularization for undocumented migrants and the establishment of a guest worker program. Mónica Verea, *Los migrantes temporales en América del Norte: propuestas y respuestas* (Mexico City: CISAN-UNAM, 2003), p. 15.

[3] Sixty-one percent of the 107,048 Mexicans who were given work visas in 2003 received H2-B visas, for low-skilled non-agricultural workers; 9 percent of them were granted visas to work in agriculture; and 15 percent received H1-B visas for highly skilled workers. Only 1,269 people (1 percent) were given TN visas for professionals based on NAFTA. For more information, see Mónica Verea, "Movilidad laboral a diez años de la creación del espacio del TLCAN," Monica Gambrill, comp., *Impacto del TLCAN en México a los 10 años* (Mexico City: CISAN-UNAM, at press).

[4] The Real ID was approved by the U.S. Senate last May 10, five days after the House of Representatives passed it 368 to 58. It stipulates that anyone who requests or renews a drivers' license must present an authentic copy of his/her birth certificate, which must be verified by the Department of Motor Vehicles, together with other documents like his/her Social Security number and utility bills like light, water or gas bills.

[5] This is the case of New York State judge Karen S. Smith, who found that the state had no right to deny drivers' licenses to immigrants if they cannot prove they are in the country legally.

[6] "Congress Approves Financing to Fight Wars and Terrorism," *The New York Times*, May 11, 2005.

[7] "U.S. to Bolster Arizona Border Security," *Los Angeles Times*, March 30, 2005.

[8] John Cornyn is the chairman of the Senate Subcommittee on Immigration, Border Security and Citizenship, and Jon Kyl is the chairman of the Subcommittee on Terrorism and Homeland Security.

[9] The bill is divided into four parts: a) Border Enforcement and Visa Security; b) Interior Enforcement; c) State and Local Law Enforcement; and d) Workers Identification and Document Integrity.

[10] Among other things, it also proposes reimbursing the states for expenditures incurred in incarcerating undocumented aliens. John Cornyn, Jon Kyl, *Comprehensive Enforcement and Immigration Reform Act of 2005*, www.cornyn.senate.gov, consulted May 26, 2005. See also Alan Elsner, "Immigration Changes Face Obstacles in Congress," Reuters, June 21, 2005, and "U.S. Mexican Lawmakers Find Common Ground on Immigration," *Washington Times*, June 14, 2005.

[11] The bill contains measures of border security; assistance to foreigners accused of a crime; a visa program for workers; the promotion of a model of migratory circulation; family reunification; civic integration and promotion of health care access.

[12] Mark Krikorian, "Fool Me Twice, Shame on Me: the McCain/Kennedy Amnesty, *National Review Online*, May 13, 2005, http://www. nationalreview.com/comment/krikorian200505130942.asp

[13] This is a report by an independent working group sponsored by the Council on Foreign Relations, the Mexican Council for International Affairs and the Canadian Council of Chief Executives. Pedro Aspe coordinated the Mexican participants, John P. Manley, the Canadians, and William Feld, those from the U.S.

[14] Council on Foreign Relations in association with the Canadian Council of Chief Executives and the Mexican Foreign Affairs Council, *Building North American Community: Report of the Independent Task Force on the Future of North America* (Mexico City: mimeographed copy, May 2005).